

# **JUVENILE DELINQUENCY DISPOSITION HEARING**

**[REVISED 2006]**



**ADMINISTRATIVE OFFICE  
OF THE COURTS**

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EDUCATION DIVISION/CENTER FOR  
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This benchguide covers disposition hearings under [Welf & I C §§702–731](#) generally and [Cal Rules of Ct 1492–1496.5](#). Although it does not cover hearings under [Welf & I C §777](#), some of the disposition hearing principles apply to probation revocation situations because, in a sense, the court also undertakes a new disposition every time it sustains a [Welf & I C §777](#) petition. *In re Ernest R.* (1998) 65 CA4th 443, 448, 76 CR2d 453.

**II. [§119.2] PROCEDURAL CHECKLIST**

- (1) *The case is called by the bailiff, court clerk, or probation officer.*
  - (2) *Determine who is present and their interest in the case before the court.* [Welf & I C §§676, 676.5, 679](#); [Cal Rules of Ct 1410\(b\), \(e\)](#). See discussion in [Benchguide 118: Delinquency Jurisdiction Hearings §§118.32–118.33](#) (Cal CJER).
  - (3) *If the child is not represented by counsel, advise the child of his or her right to an attorney and appoint one to represent the child.* [Welf & I C §700](#); [Cal Rules of Ct 1412\(g\)](#). See [§119.7](#).
  - (4) *If paternity has not been previously determined, make inquiries to identify any alleged and presumed fathers.* See [§119.90](#).
  - (5) *Obtain a stipulation to hear the case, if applicable, and ensure that the hearing is recorded.* See [§119.8](#).
  - (6) *If appropriate, grant a continuance to permit receipt of the social study or for other permissible reason.* See [§119.4](#). The court may also continue the hearing for 90 days for diagnostic study by the California Division of Juvenile Justice (DJJ) of the Department of Corrections and Rehabilitation. See [§§119.5, 119.69](#).
- Note:* The Division of Juvenile Justice (DJJ) (the former California Youth Authority), was renamed effective July 1, 2005. It is part of the Department of Corrections and Rehabilitation, under the authority of the Chief Deputy Secretary for Juvenile Justice. The Division of Juvenile Facilities within the DJJ has direct responsibility for the former CYA facilities. See [Welf & I C §§1000, 1703\(c\), 1710\(a\)](#); [Pen C §6001](#).
- (7) *Review the social study and other evidence on the most appropriate disposition for the child.* See [§§119.9–119.13](#).
  - (8) *Consider all the dispositional options, including:*
    - Dismissing the petition.

- Placing the child on informal probation for up to six months without a declaration of wardship. [Welf & I C §§654–654.4, 725\(a\)](#); [Cal Rules of Ct 1493\(a\)\(2\)\(B\)](#).
- Declaring child a ward of the court and placing the child under probation department supervision. [Welf & I C §§725\(b\), 727\(a\)](#); [Cal Rules of Ct 1493\(a\)\(2\)\(C\)](#).
  - Removing the child from the parent’s custody (see discussion in [§§119.21–119.25](#) and [§§119.75–119.89](#)).
  - Ordering that the parent or guardian retain custody of the child with or without probation officer supervision ([Welf & I C §727\(b\)](#)).
  - Limiting control by the parent or guardian ([Welf & I C §726](#); [Cal Rules of Ct 1493\(b\)](#); see [§119.20](#)).
  - Placing the child on probation (see discussion in [§§119.30–119.45](#)).
  - Imposing a fine and/or ordering restitution (see [§§119.46–119.60](#)).
  - Imposing a period of confinement in a county juvenile hall or camp or ranch (see [§119.23](#)).
  - Committing the child to the DJJ (see [§§119.23–119.25](#) and [§§119.68–119.74](#)).

(9) *Make applicable accompanying orders, such as orders for the child’s welfare, protective orders, orders joining relevant agencies, and orders for counseling and education.* See discussion in [§§119.17–119.19](#).

(10) *If granting probation, formulate conditions related to the child’s situation and offense.* See [§§119.30–119.45](#).

(11) *If imposing a fine or a restitution order, determine the amount.* See [§119.49](#) and [§§119.53–119.56](#). The court may need to hold a separate hearing on issues relating to victim restitution and restitution fines.

(12) *If ordering the ward confined in a secure facility or committed to the DJJ, determine the maximum time of confinement.* See [§§119.61–119.67](#).

(13) *Assess the need for mental health treatment and commitment.* See [§§119.26–119.28](#).

(14) *If committing the ward to the DJJ, the court must complete Judicial Council form JV-732, Commitment to the California Department of Corrections and Rehabilitation, Division of Juvenile Justice, and make appropriate findings and orders.* See [§119.74](#).

(15) *If removing the child from the home after finding the factors listed in Welf & I C §§726(a), Cal Rules of Ct 1493(c), and in 42 USC §600–Title IV-E, order reunification services, work on developing a permanent plan, and set status review and permanency hearings. See §§119.77–119.81.*

### III. APPLICABLE LAW

#### A. [§119.3] Purpose of Hearing

The purposes of the hearing are to determine whether to dismiss a sustained petition regarding a child who has been found to be described by Welf & I C §602, whether the child should be adjudged a ward of the court (Welf & I C §725(b)), and to hear evidence and make orders regarding disposition. See Welf & I C §§702, 706. The court must hear disposition evidence both after a contested hearing and after taking an admission. See *In re J.L.P.* (1972) 25 CA3d 86, 89–90, 100 CR 601.

#### B. Time Considerations

##### 1. [§119.4] Generally

The disposition hearing is held after the jurisdiction hearing. See Welf & I C §§702, 706; Cal Rules of Ct 1489(a). The court may continue the disposition hearing, if necessary, to receive the social study of the probation officer, to refer the child to a juvenile justice community resource program, or to receive other evidence. Welf & I C §702. This continuance may not exceed 10 judicial days if the child is detained, or 30 days from the filing of the petition if the child is not detained. Welf & I C §702; Cal Rules of Ct 1489(a).

The court may also grant a continuance for an additional 15 days for good cause if the child is not detained. Welf & I C §702; Cal Rules of Ct 1489(a). During any continuance period, the court may order the child detained or released from detention. Welf & I C §702; Cal Rules of Ct 1489(b).

##### 2. [§119.5] Continuance for Department of Corrections and Rehabilitation, Division of Juvenile Justice (DJJ) Observation and Diagnosis

When the child is eligible for DJJ (formerly the California Youth Authority) commitment, if the court concludes that the best interests of the child requires the court to have access to the observation and diagnosis of the DJJ diagnostic and treatment center, the court may continue the disposition hearing for up to 90 days. Welf & I C §704(a); Cal Rules of Ct 1489(c). In this instance, the court may place the child temporarily at such a center and, when the child is returned, he or she must be brought to court



within two judicial days; the disposition hearing must then be held within 10 judicial days from that date. [Cal Rules of Ct 1489\(c\)](#).

- ➡ JUDICIAL TIP: Judges should determine if their counties have a contract with the DJJ to perform this diagnostic function. Counties that do have such a contract are assessed a substantial fee for this service.

### C. [§119.6] Conduct of Hearing

As with any other delinquency proceeding, the court must control the disposition hearing so it can expeditiously determine the present condition and future welfare of the child and therefore arrive at a fair and effective disposition. See [Welf & I C §680](#); [Cal Rules of Ct 1412\(a\)](#). The proceeding must be conducted in an informal, nonadversarial manner, unless there is a contested issue of fact or law. [Welf & I C §680](#); [Cal Rules of Ct 1412\(a\)](#).

#### 1. [§119.7] Advisement of Rights

The court must advise an unrepresented child, parent, or guardian of the right to representation and, if applicable, of the right to have counsel appointed, subject to a claim of reimbursement. [Welf & I C §700](#); [Cal Rules of Ct 1412\(g\)](#), 1479. For discussion of right to counsel, see *Benchguide 116: Juvenile Delinquency Initial or Detention Hearing* §§116.22–116.27 (Cal CJER).

The court must also advise the child, parent, and guardian of the following rights ([Cal Rules of Ct 1412\(j\)](#); see [Welf & I C §702.5](#)):

- Any right to assert the privilege against self-incrimination,
- The right to confront and cross-examine witnesses and preparers of reports,
- The right to subpoena witnesses, and
- The right to present evidence.

In addition, the child, parent or guardian, and their attorneys have the right to receive probation officer reports and to inspect the documents used in preparing the reports. [Cal Rules of Ct 1412\(j\)](#). Unless prohibited by court order, the child, parent or guardian, and their attorneys also have the right to receive all other documents filed with the court. [Cal Rules of Ct 1412\(j\)](#).

#### 2. [§119.8] Presiding Over and Recording the Hearing

With a written stipulation to preside at a jurisdiction hearing, a referee may also preside over a subsequent disposition hearing if the

parties do not object. *In re P.I.* (1989) 207 CA3d 316, 321–322, 254 CR 774. If the juvenile admits the truth of the allegations, he or she is entitled to have the same judge preside at the jurisdiction and disposition hearing. *In re Ray O.* (1979) 97 CA3d 136, 139, 158 CR 550. The juvenile may waive the right to be sentenced by the judge who accepts the plea bargain (*Arbuckle* waiver; see *People v Arbuckle* (1978) 22 C3d 749, 150 CR 778), however, and this waiver need not be a personal one. *In re James H.* (1985) 165 CA3d 911, 921, 212 CR 61. For a discussion of referees and commissioners in the context of jurisdiction hearings, see [Benchguide 118: Delinquency Jurisdiction Hearings §118.29](#) (Cal CJER).

The disposition hearing must be recorded by a court reporter. *In re Ray O.* (1979) 97 CA3d 136, 138, 158 CR 550.

### 3. [§119.9] Evidence in General

After finding jurisdiction, the court must hear evidence on the most appropriate disposition for the child. [Welf & I C §706](#). To reach this decision, the court must consider the probation officer's social study and any other relevant and material evidence that may be offered, including evidence offered by the probation officer, the child, or the parent or guardian. [Welf & I C §706](#); [Cal Rules of Ct 1492\(b\)](#). The court may also consider any written or oral statement offered by the victim, the parent or guardian of the victim if the victim is a minor, or if the victim has died or is incapacitated, the victim's next of kin (see [Welf & I C §656.2\(b\)](#)). [Welf & I C §706](#).

On the question of granting probation or on whether there are circumstances in aggravation under [Pen C §1170](#), the court may consider information gathered by law enforcement agencies, including school district police, regarding taking the child into custody on another matter. [Welf & I C §828\(a\)](#). Moreover, the court may, on its own motion, require production of other relevant evidence. [Cal Rules of Ct 1492\(b\)](#).

In any judgment or dispositional order, the court must state that the social study has been read and considered by the court, along with other evidence. [Welf & I C §706](#); [Cal Rules of Ct 1492\(b\)](#). Under [Welf & I C §725.5](#) (see [§§119.10–119.13](#)), the court must consider the broadest possible range of information in determining the best way to rehabilitate the child. *In re Robert H.* (2002) 96 CA4th 1317, 1329, 117 CR2d 899.

It is mandatory that the court receive and consider a *current* social study report before making a disposition under [Welf & I C §706](#). [Cal Rules of Ct 1492\(a\)](#); *In re L.S.* (1990) 220 CA3d 1100, 1103–1104, 269 CR 700 questioned on other grounds in *People v Bullock* (1994) 26 CA4th 985, 31 CR2d 850 (a full social study done 19 months earlier was insufficient).

#### 4. Basis for Disposition

##### a. [§119.10] In General

In deciding the appropriate disposition, the court may consider facts before it at the disposition hearing that are either admitted or that the court finds to be true by preponderance of the evidence. *In re Gary B.* (1998) 61 CA4th 844, 850, 71 CR2d 824. The court must consider, in addition to other relevant and material evidence (Welf & I C §725.5),

- the age of the child,
- the circumstances and gravity of the offense, and
- previous delinquent history.

The court must consider these factors in establishing the best disposition for the child and, although the court need not expressly mention each factor, it must carefully take each of them into account. See *In re John F.* (1983) 150 CA3d 182, 184–185, 197 CR 495.

In addition to the offense on which the petition is sustained, the court may consider events revealed by the social study that are transactionally related to that offense. *In re Gary B.* (1998) 61 CA4th 844, 851, 71 CR2d 824 (court could consider gun use despite the fact that the enhancement for gun use had been dismissed under a plea bargain). A judge may also consider illegally seized, previously suppressed evidence during a disposition hearing (*In re Michael V.* (1986) 178 CA3d 159, 173, 223 CR 503) and dismissed counts (*In re Raymond B.* (1981) 121 CA3d 785, 788, 789, 175 CR 359). Indeed, the rule of *People v Harvey* (1979) 25 C3d 754, 159 CR 696, which prohibits the sentencing judge from relying on facts relating to charges that were dismissed as part of a plea bargain, is inapplicable to juvenile court. *In re Jimmy P.* (1996) 50 CA4th 1679, 1683, 58 CR2d 632. Therefore, a *Harvey* waiver is not required when using dismissed allegations in determining an appropriate juvenile disposition. 50 CA4th at 1681.

The court may also use previously sustained petitions as a basis for its dispositions. See, e.g., *In re Robert S.* (1979) 92 CA3d 355, 360–362, 154 CR 832.

##### b. [§119.11] Application of the Welf & I C §725.5 Factors

Courts have considered the unique characteristics of each case in applying the factors set out in Welf & I C §725.5. For example, in *In re Tyrone O.* (1989) 209 CA3d 145, 152, 257 CR2d 134, the court noted that although the “circumstances and gravity of the offense” were a consideration in committing the ward to the DJJ (formerly the California Youth Authority), they were not dispositive. The court held that the “gravity of the offense” factor was outweighed by the ward’s failure to

take responsibility and his pattern of assaultive and disruptive behavior (*i.e.*, “previous delinquent history”) even though the ward was not a sophisticated offender, and a church counselor enlisted by his mother was optimistic about his rehabilitation. 209 CA3d at 152–153.

Another example of the appropriate use of a factor is *In re Robert H.* (2002) 96 CA4th 1317, 1330, 117 CR2d 899, in which the court used the “gravity of the offense” (child had fired an automatic weapon) to remove the child from the home and place him in a camp community program although he had caring and knowledgeable parents and no prior record.

### c. [§119.12] Other Considerations

Juveniles have the right to make personal statements at the disposition hearing and present mitigating information. See *Welf & I C §706*; *In re Shannon B.* (1994) 22 CA4th 1235, 1246–1247, 27 CR2d 800. Despite this, the provisions of *Evid C §352*, permitting the court to limit relevant evidence when it is cumulative, time-wasting, or confusing, must be read into *Welf & I C §706*. *In re Romeo C.* (1995) 33 CA4th 1838, 1843–1845, 40 CR2d 85. The court may use these provisions to prohibit or limit cross-examination of the probation officer if appropriate. *In re Romeo C.*, *supra*.

A court may take judicial notice of records and orders in its own file under *Evid C §452(d)(1)*. *In re Martin L.* (1986) 187 CA3d 534, 539–540, 232 CR 43 (court took judicial notice of fact that child was previously in court for same offense).

Finally, a ward cannot use the psychotherapist-patient privilege to prohibit a therapist from the sexual offender program facility from testifying about the ward’s progress in the program when the court had made participation in that program a condition of probation. *In re Pedro M.* (2000) 81 CA4th 550, 554–555, 96 CR2d 839 (no details of any therapeutic session would be discussed).

## 5. [§119.13] Social Study

The probation officer must prepare a report (*Welf & I C §280*) and the court must receive that report in evidence when making the disposition (*Welf & I C §706*). The social study must contain information relevant to disposition, including parole status information and a disposition recommendation. *Cal Rules of Ct 1492(a)*.

If the probation department recommends placement in foster care or if the court is considering such placement or the child is already in foster care, the social study must include a case plan containing information required by *Welf & I C §706.6* (*e.g.*, circumstances leading to removal, description of the home in which the child will be placed). *Welf & I C §706.5*; *Cal Rules of Ct 1492(a), (c)*. Each case plan must be

completed and filed by the date of disposition or within 60 calendar days of initial removal, whichever occurs first. [Welf & I C §636.1\(a\)](#); [Cal Rules of Ct 1492\(c\)](#).

The case plan must also include a description of the efforts required to return the child safely home (see [Welf & I C §636.1\(b\)](#)) if the probation officer believes that the child will be able to return home through reasonable efforts by the child, the parents or guardian, and the probation officer. [Cal Rules of Ct 1492\(c\)\(1\)](#). The case plan must contain an assessment of the strengths of the child and the foster family and other information required by [Welf & I C §706.6](#) if the probation officer believes that foster care placement is the most appropriate disposition for the child. [Cal Rules of Ct 1492\(c\)\(2\)](#).

The probation officer must submit copies of the social study to the clerk at least 48 hours before the disposition hearing is scheduled to begin, and the clerk must make the copies available to the parties and attorneys. [Cal Rules of Ct 1492\(a\)](#). The court must grant a continuance of up to 48 hours on the request of a party who has not been given a copy of the social study as required. See [Welf & I C §702](#); [Cal Rules of Ct 1492\(a\)](#).

#### **D. [§119.14] Finding re: Misdemeanor or Felony/Degree of Offense**

Even if the court has already made a finding on the record as to whether the offense is a felony or a misdemeanor, it must make that determination again and expressly declare on the record (1) that it has considered that the offense may be either a felony or a misdemeanor (a “wobbler”) and (2) whether the offense is a felony or misdemeanor. [Welf & I C §702](#); [Cal Rules of Ct 1494\(a\)](#), [1493\(a\)\(1\)](#). Failure to make this determination requires remand. *In re Manzy W.* (1997) 14 C4th 1199, 1210, 60 CR2d 899. One consequence of failing to make this determination is that, without an explicit finding that the offense was a felony, the court may not be able to order the juvenile to provide DNA samples under [Welf & I C §296\(a\)\(1\)](#). *In re Nancy C.* (2005) 133 CA4th 508, 511–512, 34 CR3d 871.

If it did not already do so at the jurisdiction hearing, the court must also note the degree of the offense. [Cal Rules of Ct 1488\(e\)](#).

#### **E. [§119.15] Dispositional Options**

At the conclusion of the disposition hearing, the court may dismiss the petition either in the interests of justice and the child’s welfare or because the child does not need either treatment or rehabilitation. [Welf & I C §782](#); [Cal Rules of Ct 1493\(a\)\(2\)\(A\)](#). The court may order dismissal and the setting aside of findings whether or not the child has been declared a ward. [Welf & I C §782](#).

Another option is to place the child on informal probation for up to six months without a declaration of wardship. [Welf & I C §§654–654.4, 725\(a\)](#); [Cal Rules of Ct 1493\(a\)\(2\)\(B\)](#). See also discussion in [Benchguide 118: Delinquency Jurisdiction Hearings §§118.26–118.28 \(Cal CJER\)](#). If the child has admitted a felony offense, the court may decide, with the agreement of the child’s counsel, that deferred entry of judgment is the best alternative, although this process is not available if, at the time of the admission, the court has found the child to be described by [Welf & I C §602](#), and it would not be likely that an admission would have been entered had the child not been assured that deferred entry of judgment would follow. For a discussion of deferred entry of judgment, see discussion in [Benchguide 116: Delinquency Initial or Detention Hearings §116.36 \(Cal CJER\)](#).

Finally, the court may declare the child to be a ward of the court. [Welf & I C §725\(b\)](#); [Cal Rules of Ct 1493\(a\)\(2\)\(C\)](#). If so, the court may keep the child at home; remove the child from the parent’s custody (see discussion in [§§119.21–119.25](#) and [§§119.75–119.89](#)); order that the parent or guardian retain custody of the child with or without probation officer supervision ([Welf & I C §727\(b\)](#)); and/or may limit control by the parent or guardian ([Welf & I C §726](#); [Cal Rules of Ct 1493\(b\)](#); see [§119.20](#)). The court may also place the child on probation (see discussion in [§§119.30–119.45](#)), impose a fine and/or order restitution (see [§§119.46–119.60](#)), and/or place the child in a facility or commit him or her to the DJJ (formerly the California Youth Authority) (see [§§119.23–119.25](#) and [§§119.68–119.74](#)). If declaring wardship, unless ordering unsupervised probation, the court must order the child to be under probation department supervision. [Welf & I C §727\(a\)](#).

If a ward used a firearm in the commission of a violent felony, it is mandatory that the court place him or her in a juvenile hall, ranch, camp, or with the DJJ. [Welf & I C §602.3\(a\)](#).

If the offense is related to driving, the court may also suspend or revoke the child’s driver’s license under [Veh C §§13201–13202.8](#).

### 1. [§119.16] General Considerations

Within the limits of [Welf & I C §202](#) (juvenile proceedings are primarily rehabilitative and may not result in retribution), the court has discretion to choose probation or various forms of confinement in order to hold the juvenile offender accountable and protect the public. *In re Eddie M.* (2003) 31 C4th 480, 507, 3 CR3d 119 (probation revocation hearing). With these purposes in mind, if the juvenile commits new offenses, placements need not follow any particular order. *In re Eddie M.*, *supra*. Indeed, if two placements would be appropriate but one is unavailable, the court may choose the less desirable one even if it is the DJJ (formerly the



California Youth Authority). *In re Gerardo B.* (1989) 207 CA3d 1252, 1258, 255 CR2d 339.

Generally, however, a court may not increase punishment because a juvenile does not confess to the alleged offense and demands a contested hearing, but it can augment the punishment if the juvenile commits perjury during the jurisdiction hearing. *In re Lawanda L.* (1986) 178 CA3d 423, 431, 433–434, 223 CR 685. Moreover, a court may not refuse to consider supervised probation without a declaration of wardship merely because the child had rejected this settlement earlier and had exercised the right to adjudication. *In re Edy D.* (2004) 120 CA4th 1199, 1202, 16 CR3d 293.

## 2. [§119.17] Accompanying Orders/Joinder

After a declaration of wardship, the court may make orders for the welfare of the child, including orders relating to the child's care, custody, support, supervision, and medical treatment. *Welf & I C §726(a)*; *Cal Rules of Ct 1493(e)*. The court may join any agency that it determines has failed to meet the legal obligation to provide services. *Welf & I C §727(a)*.

### a. [§119.18] Protective and Restraining Orders

After declaring wardship or terminating wardship for a child under 18, when proceedings for dissolution, custody, or parentage are pending, the court may issue a protective order under *Welf & I C §213.5* or *Fam C §6218*. *Welf & I C §726.5(a)*. If a protective order is issued, the court must notify the court in which the proceeding is pending. *Welf & I C §726.5(b)*. These orders are not confidential. *Welf & I C §726.5(f)*.

Protective orders must continue until modified or terminated by a subsequent juvenile court order. *Welf & I C §726.5(c)*. Once jurisdiction is terminated by the juvenile court, the protective order must be filed in the family law proceeding and then must become a part of *that* proceeding and may only be terminated or modified in the family court. *Welf & I C §726.5(c)*.

If there is no pending family law proceeding, the protective order may be used as the sole basis for opening a file in the court in which the parent who has been awarded physical custody resides. *Welf & I C §726.5(d)*.

The court may also issue ex parte restraining orders under *Welf & I C §213.5*. See discussion in *Benchguide 116: Delinquency Initial or Detention Hearings §116.56* (Cal CJER).

### b. [§119.19] Orders for Parent To Participate in Counseling or Education Program

The court may order the parent or guardian to participate in a counseling or education program. *Welf & I C §727(b)*. In addition, the

court may direct any orders to the parent or guardian that would aid in securing the child's welfare, including orders requiring the parents or guardians to ensure the minor's regular school attendance and to obtain appropriate educational services. [Welf & I C §727\(c\)](#).

When counseling or other treatment services are ordered for the child, the parent, guardian, or foster parent must be required to participate in those services, unless this participation would be detrimental to the child. [Welf & I C §727\(c\)](#).

### 3. [§119.20] Limitations on Custody by Parent or Guardian

When a child is declared a ward, the court may limit the control that the parent or guardian may exercise over the ward; any limitations must explicitly be set out in the order. [Welf & I C §726\(a\)](#); [Cal Rules of Ct 1493\(b\)](#). The court may order the custody of the child to be under the supervision of the probation officer, while keeping the child in the home. [Cal Rules of Ct 1493\(e\)\(2\)](#).

When the court limits the parent's or guardian's right to make educational decisions, the court must simultaneously appoint a responsible adult to make these types of decisions. [Welf & I C §726\(b\)](#); [Cal Rules of Ct 1493\(e\)\(5\)](#), 1499. The responsible adult must be one who has no conflict of interest that might restrict the ability to make educational decisions. [Welf & I C §726\(b\)](#). If the court cannot appoint a responsible adult to make these educational decisions, it must refer the child to a local educational agency for the appointment of a surrogate parent under [Govt C §7579.5](#). [Welf & I C §726\(b\)](#).

### 4. [§119.21] Removal From Parental Custody

The court may not remove the child from the parent's or guardian's custody, unless it finds ([Welf & I C §§726\(a\)](#); [Cal Rules of Ct 1493\(c\)](#)):

- The parent or guardian has failed to provide, or is incapable of providing, appropriate maintenance, training, and education for the child;
- The child has failed to reform while on probation in the custody of the parent or guardian; or
- The child's welfare requires that he or she be removed from the physical custody of the parent or guardian.

The court must also find that ([42 USC §600—Title IV-E](#)):

- Continuance in the home would be contrary to the child's welfare,
- The probation officer is vested with the child's temporary placement and care, and
- Reasonable efforts have been made to prevent removal.



Whenever the court removes the child from home as a result of a wardship order, it must specify the maximum term of confinement. [Welf & I C §726\(c\)](#); [Cal Rules of Ct 1494\(b\)](#).

- ☛ JUDICIAL TIP: The court should advise the child of this maximum term even if there has been no removal.

**a. [§119.22] Delay in Placement**

If the child is detained pending the implementing of the disposition order, the court must periodically review the case to determine whether the delay is reasonable. [Welf & I C §737\(b\)](#); [Cal Rules of Ct 1493\(g\)](#). The court must review the case at least every 15 days as long as the child is detained while awaiting placement; at the review, the court must ask about the probation officer's actions in implementing the court's order, the reasons for the delay, and the effects of the delay on the child. [Welf & I C §737\(b\)](#); [Cal Rules of Ct 1493\(g\)](#).

During this period, the child may be detained in the detention home, local facility, or hall, or, if older than 18 years, in the county jail. [Welf & I C §737\(a\)](#).

**b. [§119.23] Placement in Secure Local Facility**

Once a child has been declared a ward, the court may order placement in a county juvenile home, ranch, camp, or forestry camp. [Welf & I C §730\(a\)](#); [Cal Rules of Ct 1493\(e\)\(4\)](#); see also [Welf & I C §202\(e\)\(4\)](#) (these options are permissible types of punishment). If the county does not have these types of facilities, the court may commit the child to the county juvenile hall. [Welf & I C §730\(a\)](#). The confinement may not be for more than the maximum term. See [Welf & I C §726\(c\)](#) and discussion in [§§119.61–119.67](#).

Placements must, however, be authorized by statute. Placing a juvenile in county jail is not an option even with the agreement of the juvenile. *In re Jose H.* (2000) 77 CA4th 1090, 1097, 92 CR2d 228; [Welf & I C §202\(e\)\(4\)](#). (even when juvenile had turned 18 shortly before disposition). Under [Welf & I C §208.5](#) (one of a series of statutes providing for custodial segregation of minors from adults), a child who has turned 18 must be housed in a juvenile facility, and one who is 19 or older may be housed in a juvenile facility on court order. *In re Kenny A.* (2000) 79 CA4th 1, 6, 93 CR2d 678. But a person who was declared a ward while a minor but remains within juvenile court jurisdiction after turning 18 may be confined in the county jail after a probation violation if the court first orders detention in a juvenile facility. *In re Charles G.* (2004) 115 CA4th 608, 615–616, 619, 9 CR3d 503.

A court may place a juvenile who has committed a drug possession offense in a county camp rather treating him or her under Proposition 36; Proposition 36 does not apply to those tried in juvenile court. *In re Jose Z.* (2004) 116 CA4th 953, 961, 10 CR3d 842.

**c. [§119.24] Division of Juvenile Justice Placement**

The most restrictive placement is to the DJJ (formerly the California Youth Authority). *In re Eddie M.* (2003) 31 C4th 480, 488, 3 CR3d 119 (Welf & I C §777 case), see also Welf & I C §§731(b), 734. To order this commitment, the court must only find that there would be probable benefit to the ward. Welf & I C §734. For a discussion of DJJ commitment, see §§119.68–119.74.

**d. [§119.25] Placement in Nonsecure Facility**

Unless the court has placed the child on probation without probation department supervision, the court must order the child to be placed under the supervision of the probation officer. Welf & I C §727(a). Under Welf & I C §727(a), the probation officer may place the child in any of the following:

- The approved home of a relative, or the approved home of a nonrelative, extended family member as defined in Welf & I C §362.7. In that case, the court may wish to authorize the relative to give legal consent for the child's medical care and education.
- A suitable licensed community care facility.
- A foster family agency for placement in a suitable licensed foster family home or certified family home.

If the court determines that the child should be placed in out-of-home placement, the child must be placed in a safe setting that is the least restrictive and in closest proximity to the parent's home, consistent with the selection of the environment best suited to meet the child's special needs. Welf & I C §727.1(a); Cal Rules of Ct 1493(e)(3). Order of priority is set out in Welf & I C §727.1(a). The court may place the child out-of-state only if it finds that all the following circumstances are met (Welf & I C §727.1(b)):

- In-state facilities or programs have been determined to be unavailable or inadequate
- The State Department of Social Services (DSS) has either certified the out-of-state program or has granted it a waiver.
- The requirements of Fam C §7911.1 (State DSS to make timely investigation into problems with the program) have been met.

The court must review out-of-state placements for compliance with these requirements at least once every six months. [Welf & I C §727.1\(d\)](#). For procedures relating to out-of-home placement, see [§§119.75–119.89](#).

#### **5. [§119.26] Disposition When Insanity or Other Mental Disorder Is Found**

If the court finds that the child was insane at the time the offense was committed, the court must order confinement in a state hospital or any other appropriate public or private mental health facility. [Welf & I C §702.3\(b\)](#). As an alternative, the court may order the child to undergo outpatient treatment as specified in [Pen C §§1600–1620](#). [Welf & I C §702.3\(b\)](#). If the offense is a felony, the court must order confinement in a facility for at least 180 days before the child may be released on outpatient status. [Welf & I C §702.3\(b\)](#).

##### **a. [§119.27] Procedure**

For a child who has been found to be insane, the court must transmit a copy of its order regarding that child to the community program director. [Welf & I C §702.3\(b\)](#). Before ordering confinement in a facility, the court must have ordered the community program director to provide an evaluation of the child within 15 judicial days (from the date of the order), with a recommendation on whether the child should undergo outpatient treatment or be committed to a state hospital or other mental health facility. [Welf & I C §702.3\(b\)](#). If, however, the judicial officer believes that the child has fully recovered his or her sanity, custody must be ordered to the probation department until the issue of sanity has been fully determined. [Welf & I C §702.3\(b\)](#).

The court must provide certain documents to the child after ordering confinement, such as the commitment order, the computation showing the maximum time of commitment under [Welf & I C §1026.5](#) and [Welf & I C §202.3\(e\)](#), and any arrest or detention reports. [Welf & I C §702.3\(c\)](#).

##### **b. [§119.28] Period of Commitment**

The longest possible period of commitment is the length of time that the juvenile court could retain jurisdiction (see [Welf & I C §607](#)), unless, at the conclusion of the commitment, the child represents a substantial danger of physical harm to others, in which case commitment may be extended by proceedings held under [Pen C §1026.5\(b\)](#). [Welf & I C §702.3\(e\)](#). Once the child is confined, applications for release are governed by [Pen C §§1026–1027](#). [Welf & I C §702.3\(d\)](#). A child may not be released from commitment or from the required outpatient treatment on the basis of restored sanity unless the procedures in [Pen C §1026.2](#) have been followed. [Welf & I C §702.3\(b\)](#).

**c. [§119.29] Serious Emotional Disturbance/Mental Disorder**

If a ward, age 12 through 18, has been found to be seriously emotionally disturbed, rather than insane, and has been placed on supervised probation, he or she may be placed in a regional facility. [Welf & I C §5696](#). To use this procedure, the ward must not be developmentally disabled, nor may he or she suffer from a primary substance abuse problem or need an acute psychiatric setting. See [Welf & I C §§5696–5696.5](#).

Moreover, when the court finds that the child has a mental disorder requiring intensive treatment, it may order a treatment-based alternative in accordance with [Welf & I C §§6550–6552](#). [Welf & I C §602.3\(b\)](#). Any alternative placement made in this regard must be on the record. [Welf & I C §602.3\(b\)](#).

Finally, in a county in which a mental health program has been established under [Welf & I C §710](#), the court may refer a child who appears to have a serious mental, emotional, or developmental problem for evaluation under [Welf & I C §712](#). [Welf & I C §711\(a\)](#). The child may decline the referral. [Welf & I C §711\(b\)](#).

If this program is utilized, the child must be referred to a multidisciplinary team for dispositional recommendation before the social study (see [Welf & I C §706](#), [§706.5](#), or [§706.6](#)) is prepared. [Welf & I C §713\(b\)](#). This team develops a treatment plan that the court must take into account when making the dispositional order. [Welf & I C §713\(c\), \(d\)](#).

**F. [§119.30] Probation**

When the court has found that a child is described by [Welf & I C §602](#), it may place the child on probation without declaring wardship unless the offense was one set out in [Welf & I C §654.3](#). [Welf & I C §725\(a\)](#). See discussion in [Benchguide 118: Delinquency Jurisdiction Hearings §§118.26–118.28](#) (Cal CJER). The court may also grant probation after declaring wardship with or without probation department supervision. See [Welf & I C §727\(a\)](#); [Cal Rules of Ct 1493\(b\)](#); *In re Trevor W.* (2001) 88 CA4th 833, 836, 106 CR2d 169.

If the child was adjudged a ward because of offenses listed in [Welf & I C §707\(b\)](#) or (d)(2), [Pen C §459](#), or [Health & S C §11350\(a\)](#), the court may not grant unsupervised probation. [Welf & I C §727\(a\)](#). Moreover, when the child has committed an offense involving a violation of [Pen C §12220](#) (transporting a machine gun) or sale of a controlled substance, except for misdemeanors or offenses involving marijuana, the court may only grant unsupervised probation when the interests of justice would be served by such a grant and it states the reasons for that determination on the record. [Welf & I C §727\(a\)](#). But subject to these restrictions, the court

may place a ward on unsupervised probation and impose reasonable conditions of behavior. [Welf & I C §727\(a\)](#); [Cal Rules of Ct 1493\(e\)\(1\)](#).

The court need not recite the probation conditions to the child as long as they are written on the probation order and the child has a probation officer to explain them. *In re Frankie J.* (1988) 198 CA3d 1149, 1154–1155, 244 CR 254. If short-cut phrases such as “usual terms and conditions,” “violate no law,” and “obey all laws” are confusing, the child and his or her counsel must object and request clarification. 198 CA3d at 1154. Timely objection to probation conditions must be made at the disposition hearing. *In re Josue S.* (1999) 72 CA4th 168, 172–173, 84 CR2d 796.

- ➡ JUDICIAL TIP: Although it is not necessary to recite all the conditions, many judicial officers believe it is important to highlight or emphasize those terms that relate most closely to the offense and to the rehabilitation goals.

### 1. [§119.31] Formulating Conditions

A court is vested with broad discretion to impose suitable probation conditions (*In re Antonio C.* (2000) 83 CA4th 1029, 1033, 100 CR2d 218) and may impose any reasonable condition that serves justice and enhances the ward’s rehabilitation ([Welf & I C §730\(b\)](#)). *In re Binh L.* (1992) 5 CA4th 194, 203, 6 CR2d 678. The court may order the child to go to work to support dependents or make reparations. [Welf & I C §730\(b\)](#).

In formulating conditions, the court must consider the child’s social history as well as the circumstances of the crime and must tailor each condition to fit the circumstances and the child. *In re Binh L.*, *supra*. For example, a condition prohibiting weapons possession may be valid when there was evidence that use of weapons had been contemplated even if a weapon was not used in the offense. *In re Frankie J.* (1988) 198 CA3d 1149, 1153–1154, 244 CR 254. Similarly, a probation condition that all medical and psychological records be made available to the court is reasonable when the offense demonstrated a lack of conscience and deep-seated psychological problems. *In re Christopher M.* (2005) 127 CA4th 684, 693–694, 26 CR3d 61.

Nevertheless, the power of the courts to impose probation conditions is not without limits; probation conditions must either bear a relationship to the offense or be reasonably related to future criminality. *In re Bernardino S.* (1992) 4 CA4th 613, 622, 5 CR 746. The rule of *People v Lent* (1975) 15 C3d 481, 486, 124 CR 905, requiring that a probation condition be related to the offense, criminal conduct, and future criminality, appears to be applicable to juvenile court. See, *e.g.*, *In re Frankie J.*, *supra*, 198 CA3d at 1153.

The following probation conditions are required in every situation unless the court states reasons on the record why they are inappropriate ([Welf & I C §§725, 729.2](#); [Cal Rules of Ct 1493\(b\)](#); Table in [§119.45](#)):

- School attendance,
- Parent participation with the child in a counseling or education program, and
- Curfew between 10:00 p.m. and 6:00 a.m.

## 2. [§119.32] Conditioning Probation on Juvenile Hall Time

Once a child has been declared a ward, the court may order a brief commitment to juvenile hall as a condition of probation. *In re Ricardo M.* (1975) 52 CA3d 744, 749–751, 125 CR 391. *In re Trevor W.* (2001) 88 CA4th 833, 836, 106 CR2d 169; see [Welf & I C §730\(a\)](#). A court may not condition nonwardship probation under [Welf & I C §725\(a\)](#), however, on time spent in juvenile hall. *In re Trevor W.*, *supra*, 88 CA4th at 838–839.

The court may remove the child from the home and place the child in juvenile hall if it finds that the parents have not provided appropriate care and education, the child has not reformed after previous probation in the parents' custody, or that the child's welfare requires removal. [Welf & I C §726\(a\)](#); *In re Trevor W.* (2001) 88 CA4th 833, 836, 106 CR2d 169; see [Welf & I C §730\(a\)](#). A court may not condition nonwardship probation under [Welf & I C §725\(a\)](#), however, on time spent in juvenile hall. *In re Trevor W.*, *supra*, 88 CA4th at 838–839.

A condition of probation that the juvenile spend 15 weekends in juvenile hall until he reveals the identities of the other participants is valid within the meaning of [Welf & I C §730\(b\)](#) and *People v Lent* (1975) 15 C3d 481, 486, 124 CR 905 (see discussion in [§119.31](#)). *In re Josh W.* (1997) 55 CA4th 1, 5, 9, 63 CR2d 701.

## 3. [§119.33] Drug Testing and Search Conditions

Search conditions are reasonable when alcohol and drug-related issues are involved. *In re Laylah K.* (1991) 229 CA3d 1496, 1502, 281 CR 6. Urine testing may be required as a probation condition to determine the presence of alcohol or drugs. [Welf & I C §729.3](#). In addition, a search condition for weapons may be appropriate for a child with a history of assault who will be placed in a group home. *In re Jose R.* (1982) 137 CA3d 269, 279–280, 186 CR 898.

A judge may even include weapons and drug search and testing conditions when no weapons or drugs were involved in the offense but when their use appears to be an imminent and dangerous possibility. See *In re Jimi A.* (1989) 209 CA3d 482, 488, 257 CR 147 (offense involved a lack of self-control, thus relating weapons search to concern for public

safety; also the child admitted substance abuse and there seemed to be no parental supervision during the evening hours) and *In re Abdirahman S.* (1997) 58 CA4th 963, 969, 68 CR2d 402 (search condition upheld based on public safety considerations—offense was felonious assault).

#### 4. Association With Others

##### a. [§119.34] In General

The court need not precisely define all classes of people who might be expected to be a bad influence on the child and who, therefore, the child must refrain from associating with as a condition of probation. *In re Frank V.* (1991) 233 CA3d 1232, 1243, 285 CR 16. Although the court in the *Frank V.* case did not set out the identities of those to avoid, the judge had explained to the child that he was not permitted to associate with certain people whom the probation officer or his parents would identify and further explained that “. . . if you hang out with those people, and I find out about it, you will be placed back in custody.” This was upheld as a valid condition of probation under *Welf & I C §730*. 233 CA3d at 1241, 1243. In *In re Kacy S.* (1998) 68 CA4th 704, 713, 80 CR2d 432, however, the court of appeal modified a probation condition requiring that a ward not associate with any persons not approved by the probation officer to provide only that the ward not associate with one particular person whom the judge had named.

##### ☛ JUDICIAL TIPS:

- Orders prohibiting association with others should be drawn as specifically as possible. For example, instead of prohibiting association with gang members, the order should prohibit association with *known* gang members. *In re Justin S.* (2001) 93 CA4th 811, 816, 113 CR2d 466.
- Although an order not to associate with persons who have not been approved is too broad in that such a class of persons might include grocery clerks, mail carriers, and anyone else (see *In re Kacy S.*, *supra*), it is permissible for an order to refer to persons who have been “disapproved.” *In re Byron B.* (2004) 119 CA4th 1013, 1017, 14 CR3d 805.

##### b. [§119.35] Gang Membership Conditions

The court may condition probation on the child’s not being present in any gang gathering area when the child is a self-confessed member of a gang and the offense was a result of gang activity. *In re Michael D.* (1989) 214 CA3d 1610, 1616–1617, 264 CR 476. It may also restrict entry into a certain county when a juvenile has participated in gang activities in that



county. *In re Antonio R.* (2000) 78 CA4th 937, 942, 93 CR2d 212. The condition is consistent with the rehabilitative purpose of probation. *In re Antonio R.*, *supra*.

Moreover, the court may require that the child not associate with gangs as a condition of probation even when the child does not yet have a gang affiliation; it is sufficient that the child is in danger of succumbing to gang pressures. *In re Laylah K.* (1991) 229 CA3d 1496, 1501, 281 CR 6 disapproved on other grounds in 13 CA4th 952.

#### 5. [§119.36] Refraining From Delinquent Behavior

A condition prohibiting delinquent behavior is not unconstitutionally vague because *Welf & I C §§602(a) and 601(b)* clearly spell out the parameters of delinquent behavior. *In re Justin S.* (2001) 93 CA4th 811, 815, 113 CR2d 466.

#### 6. [§119.37] Community Service and Graffiti Cleanup

A court may impose either community service or graffiti removal as a condition of probation. *Welf & I C §730(c)*. It may also require that if the child does not fully attend the community service or graffiti removal program, a law enforcement officer may take the child into custody in order to return him or her to the site of the community service or graffiti removal program. *Welf & I C §730(c)*. Parents may also be liable for their children's acts of graffiti. *Welf & I C §§742.16, 742.17*.

#### 7. [§119.38] Conditions Relating to Education

School attendance as a condition of probation is required unless the court finds it to be inappropriate and states its reasons on the record. *Welf & I C §§725, 729.2; Cal Rules of Ct 1493(b)*. Because academic achievement is related to lower likelihood of future criminality, the court may require a child to obtain satisfactory grades as a condition of probation. *In re Angel J.* (1992) 9 CA4th 1096, 11 CR2d 776 (child's offense was possession of a weapon prohibited by *Pen C §12020(a)*). But such a condition would be inappropriate for a child with a low IQ who is functioning well below grade level in many educational areas. *In re Robert M.* (1985) 163 CA3d 812, 817, 209 CR 657. Likewise, a probation condition requiring the ward to maintain a "B" grade average would be invalid when compliance would be beyond the ward's capacity. *In re Juan G.* (2003) 112 CA4th 1, 4, 5 CR3d 34.

#### 8. [§119.39] Conditions Relating to Piercing and Tattoos

A probation condition prohibiting a ward from acquiring any new tattoo or body marking is valid because it relates to criminal conduct (both because body marking is a type of mayhem and self-mutilation and



because tattoos are often gang-related); the condition is an example of the state's compelling interest in restricting children's freedom of expression through permanent skin disfigurement. *In re Antonio C.* (2000) 83 CA4th 1029, 1034, 100 CR2d 218. An absolute ban on body *piercing*, however, is invalid because it does not relate to criminal conduct. *In re Antonio C.*, *supra*, 83 CA4th at 1036.

#### 9. [§119.40] Return to Home Country or State

Generally, banishment from the country is not a valid condition of probation. See *In re Babak S.* (1993) 18 CA4th 1077, 1084, 22 CR2d 893. Under *Welf & I C §738*, however, courts are authorized to order a ward who is a resident, or whose parents or guardians are residents, of a foreign country, to be returned to the juvenile court or any agency of the country of origin that is authorized to accept him or her. In making such an order, the court may order transportation and accommodation, and may require an attendant, such as the probation officer, to accompany the child. *Welf & I C §738*. The process of returning a ward to the juvenile authorities of the country of origin or to the parents in that country has been upheld in *In re Manuel P.* (1989) 215 CA3d 48, 63, 263 CR 447.

The court may also order that the child not return to the United States without proper documentation because that is what federal immigration law requires, but it may not condition reentry into this country on the court's written permission because such a condition conflicts with the sole right of the federal authorities to determine when entry is allowed. *In re Adolpho M.* (1990) 225 CA3d 1225, 1232–1233, 275 CR 619. The burden of proof is not on the prosecutor, however, to prove that the child is unlawfully present in this country. 225 CA3d at 1231.

In addition, when a child, who has been placed on probation, or his parent or guardian is a resident of another state, the court may order the child to live with his or her parent or guardian in that state. *Welf & I C §738*.

#### 10. [§119.41] Restitution as a Condition of Probation

The court must require the payment of restitution fines and orders as a condition of probation. *Welf & I C §730.6(d)*. Victim restitution is an effective probation condition because it forces the ward to face the harm caused by his or her actions. See *People v Carbajal* (1995) 10 C4th 1114, 1124, 43 CR2d 681. But a child may not be denied formal or informal probation solely on the grounds of inability to pay. *Charles S. v Superior Court* (1982) 32 C3d 741, 751, 187 CR 144. See discussion in §119.46–119.60.

### 11. [§119.42] Registration

Despite the court's broad discretion in fashioning dispositional orders, it may only require registration as a sex offender under [Pen C §290](#) when a ward is discharged or paroled from the DJJ (formerly the California Youth Authority). *In re Bernardino S.* (1992) 4 CA4th 613, 619–620, 5 CR 746. Moreover, the court may not order a juvenile who has committed a drug offense to register as a narcotics offender. *In re Luisa Z.* (2000) 78 CA4th 978, 991, 93 CR2d 231.

### 12. [§119.43] Juvenile Versus Adult Probation

A probation condition that might be impermissible for an adult may not necessarily be unreasonable for a child who is receiving supervision and assistance from the probation officer. *In re Todd L.* (1980) 113 CA3d 14, 19, 169 CR 625. For example, the probation period for a ward who is placed home on probation may reasonably be longer than that of an adult for the same offense because the experience is much more likely to be a rehabilitative one than it would be for an adult. *In re John R.* (1979) 92 CA3d 566, 568–569, 155 CR 78. Indeed, a child may be placed on probation for an offense carrying no confinement time, although this would be impermissible for an adult. *In re Francisco S.* (2000) 85 CA4th 946, 954, 102 CR2d 514.

In addition, although an adult defendant may choose to reject probation and accept incarceration, this choice is not offered to a juvenile offender. *In re Tyrell J.* (1994) 8 C4th 68, 81–82, 32 CR2d 33. This is because, in the juvenile court context, a grant of probation is not an act of leniency but the preferred disposition under the particular circumstances. *In re Wayne J.* (1979) 97 CA3d 776, 780, 159 CR 106.

### 13. [§119.44] Parents' Involvement

Although a court may involve the parents in conditions of probation (e.g., joint participation with the child in counseling), the requirement that a parent attend AA is not a valid condition because it would only be remotely connected to the child's rehabilitation, and the parent's nonparticipation could jeopardize the probation through no fault of the child. *In re Jason J.* (1991) 233 CA3d 710, 717–718, 284 CR2d 673.

### 14. [§119.45] Table: Probation Conditions

Condition of Probation	Statutory Authority	Comments
School attendance (see also <a href="#">§119.19</a> , <a href="#">§119.31</a> , and <a href="#">§119.38</a> )	<a href="#">Welf &amp; I C §§725, 729.2</a> ; <a href="#">Cal Rules of Ct 1493(b)</a>	Required in any case unless court states reasons on record why inappropriate

Condition of Probation	Statutory Authority	Comments
Child and parent to participate in counseling or education program (see also §119.19 and §119.31)	Welf & I C §§725, 729.2; Cal Rules of Ct 1493(b)	Required in any case unless court states reasons on record why inappropriate
Child to be home between 10 p.m. and 6 a.m. unless accompanied by parent (see §119.31)	Welf & I C §§725, 729.2; Cal Rules of Ct 1493(b)	Required in any case unless court states reasons on record why inappropriate
Payment of restitution and victim restitution orders (see also §119.41 and §119.47)	Welf & I C §730.6(l)	Required as a condition of probation
Payment of restitution (see also §119.50)	Welf & I C §729	Required when the child has committed a battery on school property (Pen C §243.5) and the court does not remove him or her from the physical custody of the parent or guardian
Child to repair damage to public transit vehicle or otherwise make restitution to property owner (see also §119.50).	Welf & I C §729.1	Required when the child has committed a crime on a public transit vehicle and the court does not remove him or her from the physical custody of the parent or guardian
Urine testing (see also §119.33)	Welf & I C §729.3	Appropriate when child not removed and the probation officer requests this condition to determine the presence of alcohol or drugs
Child to attend counseling at parent's expense or, if parent cannot pay, then must participate anyway	Welf & I C §729.6	For violation of Pen C §241.2 (assault on school or park property) or §243.2 (battery on school, park, or hospital property)

Condition of Probation	Statutory Authority	Comments
Performance of services for victim under service contract (see also §119.52)	Welf & I C §729.7	When court approves a service contract between victim and child under which the child is to perform specific services in lieu of payment of restitution and the court makes performance of the contract a condition of probation
Perform up to 100 hours of community service (unless the court finds and states on the record that community service would be inappropriate)	Welf & I C §729.8(a), (b)	For possession, use, sale of controlled substance (Health & S C §§11053–11058 or §109550 or Pen C §381) on grounds of educational, religious, or recreational facilities when children are expected to be present
Not to use controlled substance and to submit to drug testing and pay reasonable fee if possible (unless the court finds that this condition would not serve interests of justice)	Welf & I C §729.9	For possession, use, sale of controlled substance (Health & S C §§11053–11058)
Must participate in and successfully complete an alcohol or drug education program if the county has such certified programs. The expense must be borne by the parent or guardian if possible	Welf & I C §729.10	For possession, use, sale of controlled substance (Health & S C §§11053–11058 or violation of Pen C §647(f) (public drunkenness) or Bus & P C §25662 (public possession of alcohol))
Repair of property damaged by graffiti (see also §119.37)	Welf & I C §742.16(a)	For committing an act prohibited by Pen C §§594, 594.3, 640.5, 640.6, and 640.7 (graffiti and other vandalism)
Prohibition against carrying a weapon, even when hunting	<i>In re David S.</i> (2005) 133 CA4th 1160, 1166–1167, 35 CR3d 309; Pen C §12021(e);	Child had committed battery against a school employee (Pen C §243.6)

### G. [§119.46] Fines and Restitution—In General

Judges often include an order requiring restitution and/or payment of a fine as part of the disposition. See [Welf & I C §731\(a\)](#). Fines may be imposed up to the amount that could be imposed on an adult for the same offense once it has been established that the ward has the ability to pay. [Welf & I C §730.5](#). Fines for criminal offenses, set out in [Pen C §1464](#), apply in this situation. [Welf & I C §730.5](#). A court has no authority, however, to impose a fine at the disposition hearing when the child has been adjudicated a ward and is not subject to probation. *In re Jon D.* (1978) 84 CA3d 337, 340, 148 CR 677.

In addition to fines, the court must generally order two types of restitution: victim restitution ([Welf & I C §730.6\(a\)\(2\)\(B\)](#)) and restitution fines payable to the state Restitution Fund ([Welf & I C §730.6\(a\)\(2\)\(A\)](#)). Victims may include the immediate surviving family of the actual victim ([Welf & I C §730.6\(j\)](#)) or a corporation, business, trust, or other entity ([Welf & I C §730.6\(k\)](#)).

#### 1. [§119.47] Victim Restitution

Every victim who incurs an economic loss as a result of the actions of a juvenile described by [Welf & I C §602](#) must receive restitution directly from that juvenile. [Welf & I C §730.6\(a\)\(1\)](#). Restitution is also required as a condition of probation ([Welf & I C §730.6\(l\)](#)) and as part of a commitment to the DJJ (formerly the California Youth Authority) (see [Welf & I C §730.6\(p\)](#)). Payment of this restitution takes precedence over payment of any restitution fine. [Welf & I C §730.6\(p\)](#). The court may direct the probation officer to determine the amount of restitution. *In re Karen A.* (2004) 115 CA4th 504, 511, 9 CR2d 369.

In addition to the payment of restitution, the court may order the ward to complete a victim impact class and/or participate in a dialogue with the victim, with the victim's consent. [Welf & I C §202\(f\)](#). For discussion of victim restitution generally, see [Benchguide 83: Restitution §§83.26–83.76 \(Cal CJER\)](#).

For a discussion of parent's or guardian's liability for restitution, see [§119.57](#).

#### a. [§119.48] Contents of Restitution Order

The order must identify each victim, unless there is good cause not to, and specify the dollar amount that is adequate to reimburse the victims for all economic losses; if the restitution amount cannot be determined, the court must still identify the victims. [Welf & I C §730.6\(h\)](#). The court must also identify any co-offenders who may be jointly and severally liable. [Welf & I C §730.6\(h\)](#). The order must also identify the losses it seeks to cover. [Welf & I C §730.6\(i\)](#).

**b. [§119.49] Determination of Amount**

Restitution to the victim must be imposed in the amount of the actual losses and, if the amount of the losses cannot be determined during sentencing, the restitution order must include a notation that the amount will be determined at the court's direction at any time during the commitment or probation. [Welf & I C §730.6\(h\)](#). If the court does not order full restitution, it must find compelling and extraordinary reasons not to do so and state them on the record. [Welf & I C §730.6\(h\)](#).

A restitution order must be made without consideration of ability to pay, and lack of ability to pay should not be a factor in determining the amount of the restitution order ([Welf & I C §730.6\(h\)](#)), unless the restitution is for damage caused by vandalism or graffiti (see [Welf & I C §742.16\(a\)–\(c\)](#)). Restitution may include

- (1) Payment for the value of stolen or damaged property ([Welf & I C §730.6\(h\)\(1\)](#)),
- (2) Medical expenses ([Welf & I C §730.6\(h\)\(2\)](#)), and
- (3) The victim's lost wages or profits because of time spent by the victim or his or her parents assisting the police or prosecution ([Welf & I C §730.6\(h\)\(3\)–\(4\)](#)).

The restitution must be directly related to the losses caused by the child's conduct and must relate to acts performed with the same state of mind as the offense. *In re Maxwell C.* (1984) 159 CA3d 263, 265, 205 CR 310. Thus the child should not be responsible for losses arising from criminal conduct that was either not charged or was not found or admitted to be true, especially if that uncharged conduct would have required a different state of mind than that required for the conduct for which the child was convicted. 159 CA3d at 264–265.

In ordering restitution under [Welf & I C §730.6](#), the court may not consider potential third-party reimbursement. *In re Brittany L.* (2002) 99 CA4th 1381, 1389, 122 CR2d 376. Indeed, insurance payment for damages will not offset a ward's restitution obligation under [Welf & I C §730.6\(a\)\(1\)](#) when it comes from a source that is completely independent of the ward. *In re Tommy A.* (2005) 131 CA4th 1580, 1591–1592, 33 CR3d 103 (car owner's insurance paid for injuries caused by ward's misdemeanor hit-and-run when the ward took the car without permission).

In addition, the court need not determine all the damages that might be recoverable in a civil action. 99 CA4th at 1391. The court may use any rational method to fix the amount of restitution that will make the victim whole and will help to rehabilitate the child. *In re Brian S.* (1982) 130 CA3d 523, 527, 532, 181 CR 778. This need not be the same as the comparable measure of civil damages. 130 CA3d at 531.

A restitution order for a public entity may include, not only out-of-pocket expenses, but the value of the number of hours worked on cleanup

by salaried employees. *In re Johnny M.* (2002) 100 CA4th 1128, 1134, 123 CR2d 316. The court has discretion to order restitution in a manner that will further the legislative intent of making the victim whole, rehabilitating the child, and deterring any future delinquent behavior; therefore an order for restitution to the fire department that had the responsibility of extinguishing the fire caused by the child was upheld. *In re Brian N.* (2004) 120 CA4th 591, 594–595, 15 CR3d 337.

**c. [§119.50] Particular Offenses**

Restitution is expressly required by certain statutes governing particular offenses. For example, when the child has committed a battery on school property (Pen C §243.5) and the court does not remove him or her from the physical custody of the parent or guardian, the court must require restitution to the victim of the battery as a condition of probation. Welf & I C §729. If the judge decides not to order restitution, he or she must make a finding and state the reasons on the record. Welf & I C §729. Similarly, if the child has committed a crime on a public transit vehicle, and the court does not remove him or her from the physical custody of the parent or guardian, the court must require the child to repair the damaged property or otherwise make restitution as a condition of probation, unless the court finds this condition to be inappropriate. Welf & I C §729.1(a).

**d. [§119.51] Victim Notification**

When the court orders victim restitution, each victim must be notified of the following within 60 days after restitution has been ordered (Welf & I C §730.7(b)–(c)):

- The name and address of the child ordered to make restitution.
- The amount and any conditions of restitution.
- The offense.
- The name and address of the parent or guardian.
- The rebuttable presumption that the parent or guardian is jointly and severally liable with the child for restitution up to the limits set out in CC §§1714.1 and 1714.3.
- Whether the parents or guardians were notified of potential liability and present at relevant hearings (see Welf & I C §730.7(b)(5)).
- His or her rights to a certified copy of the order stating all the information specified above.



**e. [§119.52] Direct Victim Interaction and Victim Impact Classes**

If the victim requests, the probation officer must mediate a service contract between the victim and the child under which the child makes restitution, as required by [Welf & I C §730.6](#), by performing specific services for the victim. [Welf & I C §729.7](#). If the court approves of the contract, it may make performance of the contract services a condition of probation; successful completion of the contract may then be credited as payment of restitution. [Welf & I C §729.7](#). In addition, the court may order the ward to complete a victim impact class and/or participate in a dialogue with the victim, with the victim's consent. [Welf & I C §202\(f\)](#).

**2. [§119.53] Restitution Fines**

In addition to victim restitution, the court must impose a restitution fine of between \$100 and \$1000 if the child is described by [Welf & I C §602](#) for committing a felony ([Welf & I C §730.6\(b\)\(1\)](#)) or up to \$100 for committing a misdemeanor ([Welf & I C §730.6\(b\)\(2\)](#)). This fine must be imposed in addition to any other disposition or fine and regardless of ability to pay. [Welf & I C §730.6\(c\)](#). It will be deposited in the state Restitution Fund. [Welf & I C §730.6\(c\)](#). For discussion of restitution fines generally, see [Benchguide 83: Restitution §§83.4–83.25 \(Cal CJER\)](#).

**a. [§119.54] Determination of Amount**

Although inability to pay is not a factor in ordering the fine, the court may consider this issue when determining the *amount* of the fine. See [Welf & I C §730.6\(d\)\(1\)](#). Because the ward is a minor, the court may take his or her future earning capacity into account, with the burden being on the ward to show a lack of ability to pay. [Welf & I C §730.6\(d\)\(2\)](#). Other factors that the court must weigh in determining the amount of the restitution fine are the seriousness of the offense, the circumstances surrounding the commission of the offense, economic gain, if any, and the extent to which others suffered losses. [Welf & I C §730.6\(d\)\(1\)](#). In calculating the losses suffered by victims, the court may consider psychological harm, as well as the pecuniary loss suffered by the victim and his or her family members. [Welf & I C §730.6\(d\)\(1\)](#).

The court need not make express findings on factors considered in arriving at the amount of the restitution fine. [Welf & I C §730.6\(e\)](#). The fine is not subject to penalty assessments under [Pen C §1464](#). [Welf & I C §730.6\(f\)](#).



**b. [§119.55] Waiver**

Imposition of the restitution fine is mandatory. [Welf & I C §730.6\(b\)](#). In the case of a felony, however, the court may decline to impose the fine if it finds compelling and extraordinary reasons for waiving it and states the reasons on the record. [Welf & I C §730.6\(f\), \(g\)](#). Lack of ability to pay is not such a reason. [Welf & I C §730.6\(h\)](#). On waiving the restitution fine, the court must require community service as a condition of probation instead. See [Welf & I C §730.6\(g\), \(n\)–\(o\)](#). The court may also waive community service if there are additional extraordinary reasons not to require it; if so it must state those reasons on the record. [Welf & I C §730.6\(o\)](#).

**3. [§119.56] Procedure**

The child has the right to a hearing on the question of victim restitution. [Welf & I C §730.6\(h\)](#). At the hearing, the court must resolve the question of the amount of restitution, rather than delegating to the victims the tasks of pursuing independent remedies by filing claims with insurance companies or pursuing civil actions against the minor. *In re Brittany L.* (2002) 99 CA4th 1381, 1390, 122 CR2d 376. The hearing need not be a lengthy, formal one, however. 99 CA4th at 1391.

In the case of the restitution fine, the hearing need not be separate from the disposition hearing. See [Welf & I C §730.6\(b\)](#). To determine the more complex issues relating to victim restitution, however, the hearing may be held immediately following the disposition hearing or at a later date. See [Welf & I C §729.5\(c\)](#). The court may order the parent or guardian to attend the hearing held to consider a restitution fine or payment of restitution to the victim. [Welf & I C §729.5\(a\)–\(b\)](#) (see [§119.57](#) on parents' liability).

Any person who is liable for restitution may petition the court to modify or vacate the order on the basis of changed circumstances. [Welf & I C §729.5\(f\)](#).

**4. [§119.57] Liability of Parent or Guardian**

Parents or guardians, but not foster parents, are rebuttably jointly and severally liable for a child's restitution obligation. See [Welf & I C §§730.7\(a\), \(d\), 729.5\(a\)–\(b\), \(k\)](#); [CC §§1714.1](#) (parents liable for willful misconduct of children up to certain limit), [1714.3](#) (parents liable—within statutory limits—for injury caused by firearm use by children). The court may consider the parent's or guardian's inability to pay, taking into account future earning capacity, current income, the number of dependents, and the necessary family obligations. [Welf & I C §730.7\(a\)](#). The parent or guardian has the burden of showing inability to pay, as well as the burden of showing, by a preponderance of the evidence, that he or

she was either not given notice of potential liability before the petition was sustained or was not present during the jurisdiction hearing and any hearing thereafter that dealt with restitution, fines, or penalty assessments. [Welf & I C §730.7\(a\)](#).

If the parent or guardian fails to appear at the hearing considering restitution after proper notice, the court may hold the parent or guardian jointly and severally liable with the child for restitution up to the limits of [CC §§1714.1 and 1714.3](#). [Welf & I C §729.5\(d\)](#). A judgment holding the parent or guardian jointly and severally liable with the child may be collected even when the court no longer has jurisdiction over the child. [Welf & I C §729.5\(e\)](#).

### 5. [§119.58] Apportionment Among Offenders

Although the court should take into account all the culpable parties in determining a restitution order, there are no strict guidelines for apportionment. *In re Brian S.* (1982) 130 CA3d 523, 533, 181 CR 778. Thus the court *may* allocate all responsibility for restitution to one of the offenders. *In re S.S.* (1995) 37 CA4th 543, 550, 43 CR2d 768. In that case, the ward must pay the entire restitution obligation, but if the other offenders contribute, the ward's obligation is lessened. 37 CA4th at 551.

### 6. [§119.59] Collection and Enforcement

A victim restitution order is enforceable as a civil judgment under [Pen C §1214](#). [Welf & I C §730.6\(i\), \(r\)](#); see [Pen C §1214\(b\)](#). The victim may obtain recovery from the Restitution Fund except insofar as restitution was collected by the restitution order. [Welf & I C §730.6\(i\)](#). To the extent that the victim has received compensation from the state, restitution must be ordered payable to the Restitution Fund. [Welf & I C §730.6\(i\)](#).

An order holding a parent or guardian jointly or severally liable with the child may be executed on as if it were a judgment in a civil action, including any unpaid balance remaining when the court's jurisdiction over the child terminates. [Welf & I C §729.5\(e\)](#).

### 7. [§119.60] Subsequent Reporting

Except for juveniles who are committed to the DJJ (formerly the California Youth Authority), when the court orders restitution or community service, it must require the youth to report to the court on his or her compliance with the order at least once a year until the order is fulfilled. [Welf & I C §730.8\(a\)](#). For a ward committed to the DJJ, the DJJ must monitor compliance with any restitution order and, on discharge, the DJJ must notify the court of the child's compliance. [Welf & I C §730.8\(b\)](#).

## H. Determining Confinement Time

### 1. [§119.61] Credit for Time Served

A juvenile must be given precommitment credit for the time spent in juvenile hall pending any hearing or while awaiting placement or transfer to the DJJ (formerly the California Youth Authority). See *In re Eric J.* (1979) 25 C3d 522, 536, 159 CR 317. Although there is no juvenile court law equivalent to Pen C §2900.5 (credit for time served), the law has long required that juvenile hall time be credited against any further commitment to the juvenile hall, ranch, camp, or CYA. *In re Harm R.* (1979) 88 CA3d 438, 445, 152 CR 167. Credit must be given to the extent that the period of confinement for a juvenile would otherwise exceed that of an adult for the same offense (see *Welf & I C §726(c)*). *In re Deborah C.* (1981) 30 C3d 125, 140, 177 CR 852. For juveniles, these “presentence custody credits” are better described as “precommitment” or “predisposition” custody credits. *In re Antwon R.* (2001) 87 CA4th 348, 352, 104 CR2d 473.

A ward is not entitled to credit for time spent in a nonsecure facility or while detained on home supervision (*In re Randy J.* (1994) 22 CA4th 1497, 1504–1506, 28 CR2d 152) nor for time spent in juvenile hall for an unrelated offense. *In re Fausto S.* (1985) 175 CA3d 909, 912, 221 CR 104. Therefore, the time spent in the Samaritan Outreach Program, a private treatment program, would not be eligible for predisposition confinement credits, although the time spent in county jail would be. *In re Mikeal D.* (1983) 141 CA3d 710, 721, 190 CR2d 602.

When a ward of the court is also an LPS conservatee, time spent in a mental health facility should be credited towards the minor’s sentence as long as the juvenile court has concurrent jurisdiction with the court overseeing the conservatorship; there would be no credit for time spent in the mental health facility if juvenile court jurisdiction is suspended because the person in charge of the mental health facility has determined that trial would be detrimental to the minor’s well-being. *In re Robert B.* (1995) 39 CA4th 1816, 1822–1824, 46 CR2d 691 (harmonizing *Welf & I C §6551* and *Pen C §4011.6*).

The court has a duty to calculate credits for time spent in custody before the disposition hearing and it may not delegate that duty to the DJJ or any other entity. See *In re John H.* (1992) 3 CA4th 1109, 1111, 6 CR2d 25.

### 2. [§119.62] Maximum/Minimum Terms of Confinement

Unless the child is committed to the DJJ (formerly the California Youth Authority), the maximum term of confinement that the court may impose is the longest term of imprisonment that could be imposed on an adult convicted of the same offense. *Welf & I C §726(c)*. The phrase

“maximum term of imprisonment” in [Welf & I C §726](#) incorporates the determinate sentencing scheme. *In re Jovan B.* (1993) 6 C4th 801, 816, 25 CR2d 428. Thus the maximum term means the longest of the three time periods set forth in [Pen C §1170\(a\)\(3\)](#), but without the need to follow the provisions of [Pen C §1170\(b\)](#) or to consider time for good behavior or participation under [Pen C §§2930–2932](#). [Welf & I C §726\(c\)](#). The court need only consider [Pen C §1170.1\(a\)](#) and any other possible limitations on sentencing in calculating the maximum term of confinement. See *In re Luis H.* (1986) 187 CA3d 546, 549, 231 CR 722.

When the court orders a DJJ commitment, however, it may exercise its discretion to set the maximum term of confinement at less than that of an adult convicted of the same offenses. *In re Alex N.* (2005) 132 CA4th 18, 26, 33 CR3d 172. Because [Welf & I C §731\(b\)](#) requires the court to exercise its discretion by setting the term of confinement based on the facts and circumstances of each case (see, e.g., *In re Jacob J.* (2005) 130 CA4th 429, 437, 30 CR3d 255), the maximum term may be less than that required by [Welf & I C §726](#). See *In re Alex N.*, *supra*.

The calculation under [Welf & I C §726\(c\)](#) is generally as follows: the maximum term is the upper term for the felony offense with the longest exposure and any enhancement (see *In re George M.* (1993) 14 CA4th 376, 381–382, 18 CR2d 29) plus one third the middle term for each subordinate offense including misdemeanors (see *In re Eric J.* (1979) 25 C3d 522, 536–537, 159 CR 317).

Confinement of a juvenile means placement in a juvenile hall, ranch, camp, forestry camp, secure juvenile home (see [Welf & I C §730](#)), or DJJ institution. [Welf & I C §726\(c\)](#).

The court must specify this maximum term and note it in the minutes. [Cal Rules of Ct 1494\(b\)](#). [Welfare & Institutions Code §726](#) is clearly directive and requires the court to specify the maximum term of confinement in the commitment order. *In re Ricky H.* (1981) 30 C3d 176, 191, 178 CR 324. But once the court has done that, it is the DJJ, not the court, that decides the actual period of confinement up to that maximum. *In re James A.* (1980) 101 CA3d 332, 338, 161 CR 588. The court must thus choose the outer maximum term of commitment carefully because it represents a constraint on the DJJ’s discretion. *In re George M.*, *supra*, 14 CA4th at 382. See [§119.93](#) for discussion of retention of jurisdiction beyond maximum term.

When committing the child to a camp, a court may also specify a minimum term of confinement. *In re Ronny P.* (2004) 117 CA4th 1204, 1207, 12 CR3d 675.

- JUDICIAL TIP: It is good practice to advise the ward of the maximum term of confinement at the conclusion of the disposition, whether or not the judge has imposed any custody.

**a. [§119.63] Felonies Not Covered by Pen C §1170 and Misdemeanors**

If the charged offense is a misdemeanor or a felony not included within the scope of Pen C §1170, the maximum term is the longest term of imprisonment prescribed by law. Welf & I C §726(c). Thus when a juvenile has committed felonies and misdemeanors, the aggregation limitations of Pen C §1170.1 apply when sentencing consecutively (*In re Eric J.* (1979) 25 C3d 522, 537–538, 159 CR 317), and the maximum term must be computed under the DSL whether the offenses are felonies or misdemeanors (*In re Deborah C.* (1981) 30 C3d 125, 140, 177 CR 852). Reconciling Welf & I C §726 with Pen C §1170.1(a), at least one court has held that full, consecutive misdemeanor terms may not be imposed in juvenile court cases. See *In re Claude J.* (1990) 217 CA3d 760, 765, 266 CR 99.

**b. [§119.64] Use of Previously Sustained Petitions**

Aggregation of sentences based on previously sustained petitions is not mandatory; indeed a court has discretion under Welf & I C §726 to either aggregate or not aggregate these sentences. *In re Alex N.* (2005) 132 CA4th 18, 25–26, 33 CR3d 172.

Once a court selects a maximum term of confinement based on previously sustained petitions, however, it must inform the child of its intention so that the child has notice and a meaningful opportunity to be heard. *In re Robert S.* (1979) 92 CA3d 355, 360–362, 154 CR 832. Thus, a court cannot consider prior offenses to extend the maximum term beyond what would ordinarily be imposed for the new offense unless the petition contains notice of the intent to rely on previously sustained petitions. *In re Michael B.* (1980) 28 C3d 548, 553–554, 169 CR 723. Judicial Council Form, Juvenile Wardship Petition (JV-600), with the attachment of Violation of Law by Child (JV-620) provides the required notice. If using a previously sustained petition, the prosecution must give the child a meaningful opportunity to rebut any derogatory material in his or her record. *In re Edwardo A.* (1989) 216 CA3d 470, 479, 265 CR 188.

An offense in a new petition, which is not itself punishable by incarceration, may be aggregated with a previous offense that *is* subject to custody, thereby resulting in a custodial commitment. *In re Adrian R.* (2000) 85 CA4th 448, 456, 102 CR2d 173. The later court may not, however, redetermine the maximum confinement time for previously determined petitions; it may only aggregate unserved time from previously sustained petitions. *In re David H.* (2003) 106 CA4th 1131, 1136–1137, 131 CR2d 330.

When the court aggregates the period of confinement on multiple counts under Welf & I C §726, including previously sustained petitions, it

is not required to include those petitions for which the ward has already been confined. *In re Bryant R.* (2003) 112 CA4th 1230, 1233, 5 CR3d 734.

### c. [§119.65] Enhancements

Enhancements may be added to the maximum term of confinement under [Welf & I C §§726 and 731](#) if they are pleaded and proven. [Welf & I C §726\(c\)](#). In calculating the maximum sentence when there is an enhancement that has a lower, middle, and upper term, the court should select the upper term. *In re George M.* (1993) 14 CA4th 376, 382, 18 CR2d 29.

The “bail/OR” enhancement of [Pen C §12022.1](#) (enhancement for committing a felony while free on bail or own recognizance (OR)) applies to juvenile offenders because home supervision is functionally equivalent to an OR release. *In re Jovan B.* (1993) 6 C4th 801, 809–816, 25 CR2d 428.

### 3. [§119.66] Concurrent v Consecutive Sentencing

Under [Welf & I C §726](#), the court may aggregate terms, based both on multiple counts and on previously sustained petitions, in computing the maximum confinement. *In re Adrian R.* (2000) 85 CA4th 448, 454, 102 CR2d 173. If the court elects to aggregate the periods of confinement on multiple counts or multiple petitions, the maximum term is the aggregate term of imprisonment specified in [Pen C §1170.1\(a\)](#), which includes any additional term imposed under [Pen C §§667, 667.5, 667.6, or 12022.1](#) or [Health & S C §11370.2](#). [Welf & I C §726\(c\)](#). Nevertheless, in calculating the maximum term of confinement for a juvenile under [Welf & I C §726](#) when multiple counts including sex offenses are involved, the court may rely on [Pen C §667.6\(c\) and \(d\)](#) (permitting full consecutive sentences), rather than the [Pen C §1170.1\(a\)](#) limitation, because that is how the maximum term is imposed for an adult. *In re Prentiss C.* (1993) 14 CA4th 1484, 1487–1488, 18 CR2d 541.

[Penal Code §654](#), prohibiting multiple punishment, does not apply to juvenile confinement when the court sentences concurrently (*In re Billy M.* (1993) 139 CA3d 973, 979, 189 CR 270), nor does it apply when the sentences are run consecutively as long as they do not exceed the maximum theoretical length (*In re Robert W.* (1991) 228 CA3d 32, 34, 279 CR 625).

When the court fails to state whether multiple terms are to run concurrently or consecutively, any doubt is resolved in favor of the child and they run concurrently. *In re James A.* (1980) 101 CA3d 332, 339, 161 CR 588.



#### 4. [§119.67] Statement of Reasons Not Required

The juvenile court need not state reasons for imposing a longer commitment. *In re Ismael A.* (1989) 207 CA3d 911, 915, 255 CR 126. And it is not required to give a statement of reasons for consecutive sentencing (*In re Jesse F.* (1982) 137 CA3d 164, 170, 186 CR 841) even if the ward is sentenced to the DJJ, and punishment is one of the purposes behind the sentence (*In re Ismael A.*, *supra*).

#### I. [§119.68] Division of Juvenile Justice Commitment

The former California Youth Authority is now known as the Division of Juvenile Justice (DJJ) of the Department of Corrections and Rehabilitation. It was renamed effective July 1, 2005, and made part of the Department of Corrections and Rehabilitation, under the authority of the Chief Deputy Secretary for Juvenile Justice. The Division of Juvenile Facilities within the DJJ has direct responsibility for the former CYA facilities. See [Welf & I C §§1000, 1703\(c\), 1710\(a\)](#); [Pen C §6001](#).

Commitment to the California DJJ is the most restrictive placement. *In re Eddie M.* (2003) 31 C4th 480, 488, 3 CR3d 119. In making this commitment, there is no absolute rule requiring the court to have found that less restrictive placements have been previously attempted. *In re Ricky H.* (1981) 30 C3d 176, 183, 178 CR 324. Indeed, nothing bars a DJJ commitment for wards who have received no other placement. *In re Eddie M.*, *supra*. This is because the law emphasizes punishment as a tool of rehabilitation, as well as the concern for public safety. *In re Asean D.* (1993) 14 CA4th 467, 473, 17 CR2d 572. Thus, a court may base a DJJ commitment on punishment and public safety grounds as long as it will bring rehabilitative benefit to the child. *In re Michael D.* (1987) 188 CA3d 1392, 1394, 234 CR 103.

Nevertheless, it may be good practice when feasible to make a finding that less restrictive alternatives would be ineffective or inappropriate (see, *e.g.*, *In re George M.* (1993) 14 CA4th 376, 379, 18 CR2d 29) and to state explicitly why a DJJ commitment would be beneficial (see *In re Jose R.* (1983) 148 CA3d 55, 61, 195 CR 635). Indeed, the judge may wish to give specific reasons for the DJJ disposition on the record (see *In re Robert D.* (1979) 95 CA3d 767, 773, 157 CR 339 (court of appeal upheld DJJ commitment based on substantial evidence of benefit to the ward despite lack of specificity in the record)). Judicial Council Form, Commitment to the California *Department of Corrections and Rehabilitation, Division of Juvenile Justice* (JV-732), must be completed, signed by the judicial officer, and transmitted to the DJJ.

### 1. [§119.69] Division of Juvenile Justice Placement for Diagnostic Purposes

Once the court finds that the ward is eligible for DJJ (formerly the California Youth Authority) commitment, if the court finds that it is in the best interests of the child, it may (in counties with appropriate DJJ contracts) continue the disposition hearing for up to 90 days while the ward is sent for observation and diagnosis to the DJJ diagnostic and treatment center. [Welf & I C §704\(a\)](#). The DJJ is required to return the diagnosis and recommendation within the 90-day period. [Welf & I C §704\(b\)](#).

### 2. [§119.70] Staying a Division of Juvenile Justice Commitment

There is a split of authority as to whether a court may impose and then stay a DJJ (formerly the California Youth Authority) commitment as a condition of probation. Holding that there is no authority for a stayed or suspended DJJ commitment are *In re Ronnie P.* (1992) 10 CA4th 1079, 1090, 12 CR2d 875 (First District, Division 2) and *In re Babak S.* (1993) 18 CA4th 1077, 1090–1091, 22 CR2d 893 (Sixth District). Holding that a court does have the authority to stay a DJJ commitment is *In re Melvin J.* (2000) 81 CA4th 742, 755, 96 CR2d 917 (Second District, Division 5). One court has held that a stayed commitment as part of a grant of probation serves as a warning to the minor as to where continued delinquency will lead. *In re Domanic B.* (1994) 23 CA4th 366, 373, 28 CR2d 439.

In any case, the cases that permit a stay only do so as long as they do not automatically require a new DJJ commitment if the less restrictive placement fails. See *In re Kazuo G.* (1994) 22 CA4th 1, 5, 27 CR2d 155.

### 3. [§119.71] Examples of Proper Division of Juvenile Justice Commitments

Some instances in which DJJ (formerly the California Youth Authority) commitments were upheld were:

Case	Commitment
<i>In re Clarence B.</i> (1974) 37 CA3d 676, 683, 112 CR 474	Ward had committed rape and oral copulation and had history of inability to make even minimal adjustment to camp programs.
<i>In re Samuel C.</i> (1977) 74 CA3d 351, 355, 141 CR 431	There had been three prior petitions sustained and each involved firearms or violent or threatening behavior.



Case	Commitment
<i>In re Robert D.</i> (1979) 95 CA3d 767, 773, 157 CR 339	Ward had been committed twice before to the local camp and was now 17 years old. He seemed to be taking no responsibility toward rehabilitation.
<i>In re Ricky H.</i> (1981) 30 C3d 176, 183, 178 CR 324	Ward had committed several burglaries and an assault and had escaped from a less secure facility.
<i>In re Anthony M.</i> (1981) 116 CA4th 491, 503, 172 CR 153	Although not involving assaultive or violent behavior, ward had committed burglaries and auto theft, and had resisted arrest.
<i>In re Jose R.</i> (1983) 148 CA3d 55, 60, 195 CR 635	Ward had a history of delinquent behavior and had escaped from a less secure facility.
<i>In re James H.</i> (1985) 165 CA3d 911, 923, 212 CR 61	Ward may be placed in DJJ when he had <ol style="list-style-type: none"> <li>1. prior offenses of theft and unlawful driving,</li> <li>2. escaped from previous placements,</li> <li>3. present offenses of burglary and receiving stolen property,</li> <li>4. long and unsuccessful record of placements, and</li> <li>5. been prone to escape and abused drugs and alcohol, with other behavior problems.</li> </ol>
<i>In re Michael D.</i> (1987) 188 CA3d 1392, 1397, 234 CR 103	Ward assisted in a rape, was beyond parental control, had problem with drugs and alcohol, and needed structured environment and drug treatment.
<i>In re Ismael A.</i> (1989) 207 CA3d 911, 915, 255 CR 126	Ward had attempted to steal liquor while on furlough from juvenile hall. Commitment was largely for rehabilitative purposes: to give ward an education and vocational training and counseling for substance abuse.

Case	Commitment
<i>In re Asean D.</i> (1993) 14 CA4th 467, 473, 17 CR2d 572	Child was properly placed in DJJ, despite his good school record and lack of gang involvement, because he needed a longer period of treatment than would be locally available and because of the violence of the offense.
<i>In re Pedro M.</i> (2000) 81 CA4th 550, 555–556, 96 CR2d 839	Ward had made no progress in 18-month sex offender program at county level.
<i>In re Travis W.</i> (2003) 107 CA4th 368, 378–380, 132 CR2d 135	Ward participated in a carjacking in which a gun was involved, neither parent was available, and the ward lived with a sibling who had drug problems and was on probation.
<i>In re Veronique P.</i> (2004) 119 CA4th 195, 200, 14 CR3d 125	Commitment of 14-year-old was proper because of commission of <a href="#">Welf &amp; I C §707(b)</a> offense; the legislature intended the list of <a href="#">Welf &amp; I C §707(b)</a> offenses to apply to juveniles who are younger than 16 years old, even though the age limitation of 16 years of age or older is mentioned in the statute.

#### 4. [§119.72] Examples of Improper Division of Juvenile Justice Commitments

When the ward had no criminal record, did not use a weapon or behave aggressively, and had engaged in a single \$60 sale of cocaine, the court of appeal overturned the DJJ (formerly the California Youth Authority) placement, noting that although less restrictive placements need not have been tried, the court must have at least considered other options. *In re Teofilio A.* (1989) 210 CA3d 571, 577, 258 CR 540. At least one court has held that a DJJ commitment is not justified by the seriousness of a current offense alone if it is not accompanied by a history of delinquent or criminal behavior. *In re Anthony M.* (1981) 116 CA4th 491, 502, 172 CR 153.

A court may not commit a juvenile to the DJJ when another juvenile court had terminated jurisdiction over the ward in the same case; a subsequent court may not ignore or undo the termination of jurisdiction ordered by the other court. *In re Kasaundra D.* (2004) 121 CA4th 533, 542, 16 CR3d 920.

### 5. [§119.73] When Child Is Ward of Division of Juvenile Justice at Time of Disposition

If the child is a ward of the DJJ (formerly the California Youth Authority) under a prior commitment at the time of the disposition hearing, the court may either recommit or return the child to the DJJ. [Cal Rules of Ct 1493\(f\)](#). If the child is returned to the DJJ, the court may make a recommendation concerning his or her parole status. [Cal Rules of Ct 1493\(f\)](#).

Under [Welf & I C §779](#), the court cannot substitute its judgment for that of the DJJ and vacate a proper commitment to the DJJ. *In re Owen E.* (1979) 23 C3d 398, 406, 154 CR 204 (DJJ had refused parole). Similarly, when the DJJ returns a juvenile under [Welf & I C §1737.1](#), the sentencing judge does not have the option to recommit the juvenile to the DJJ. *People v Lo* (1996) 42 CA4th 189, 200–201, 49 CR2d 594 (juvenile was sentenced as an adult).

### 6. [§119.74] Findings and Orders

If the court orders the youth committed to the DJJ (formerly the California Youth Authority), it must complete Judicial Council form JV-732, Commitment to the California Department of Corrections and Rehabilitation, Division of Juvenile Justice. [Cal Rules of Ct 1494.5\(a\)](#). It must also ([Cal Rules of Ct 1494.5\(b\)–\(c\)](#), and (e)):

- Specify whether the offense is listed in [Welf & I C §707\(b\)](#);
- Order that the probation department forward medical information to the DJJ;
- Provide information to the DJJ regarding the youth's educational needs, including the youth's current individualized education program if one exists (see [Welf & I C §1742](#); see also *In re Angela M.* (2003) 111 CA4th 1392, 1398–1399, 4 CR3d 809 (court must consider special educational needs before committing child to the DJJ)); and
- Ensure that the probation officer communicates with appropriate DJJ educational staff.

The court must also find

- That the ward's mental and physical condition makes it probable that he or she will benefit from being placed in the DJJ ([Welf & I C §734](#)), and
- The maximum term of confinement ([Welf & I C §726\(c\)](#); [Cal Rules of Ct 1494\(b\)](#)). Under [Welf & I C §731\(b\)](#), the court has the discretion to set the maximum term of confinement for the ward. The court must state its awareness of that discretion and consider

the facts and circumstances of the ward and the offense and exercise its discretion accordingly. *In re Sean W.* (2005) 127 CA4th 1177, 1183, 26 CR3d 248; *In re Carlos E.* (2005) 127 CA4th 1529, 1542–1543, 26 CR3d 551; *In re Jacob J.* (2005) 130 CA4th 429, 437, 30 CR3d 255.

## J. [§119.75] When Child Is Removed From the Home

While a child is in the delinquency system, family reunification and preservation are appropriate goals, as long as those goals are consistent with the child's and public's best interests. *Welf & I C §202(b)*. Therefore, once the child has been placed outside the home (see *Welf & I C §726(a)*, *Cal Rules of Ct 1493(c)*, and Title IV-E for factors permitting removal; discussion in §119.21), the court must consider reunification services and review the progress of the child and family toward a goal of reunification or some other permanent plan. See *Welf & I C §§727(a)* (custody to probation officer for placement), 727.2 (status review hearings), and 727.3 (permanency planning hearings).

If the court has reason to believe the child is an Indian child and the child is at risk of entering foster care, the *Indian Child Welfare Act (ICWA)* (25 USC §1901 et seq) applies, and the court must follow the strict notification and placement guidelines of that act. See *Cal Rules of Ct 1439(b)*.

### 1. [§119.76] Reunification Services

When ordering the custody to the Probation Department for placement of the child outside the home, the court must generally order reunification services. *Welf & I C §727.2(a)*; *Cal Rules of Ct 1493(d)(1)*. The court need not order such services, however, if any of the following is true (*Welf & I C §727.2(b)*; *Cal Rules of Ct 1493(d)(2)*):

- Reunification services were not offered or were previously terminated for that parent or guardian in a dependency proceeding.
- The parent has been convicted of murder or involuntary manslaughter of another of his or her children or of aiding or abetting, attempting, conspiring, or soliciting to commit such a killing.
- The parent has been convicted of a felony assault resulting in serious bodily injury to the child or another of his or her children.
- The parent's parental rights have been involuntarily terminated, and reunification is not in the child's best interest.

## 2. Postdisposition Hearings When Child Removed

### a. [§119.77] Status Review Hearings

For wards who were removed from parental custody under [Welf & I C §726](#) and placed in foster care under [Welf & I C §727](#), the court or an administrative review panel must review the child's status at least every six months. [Welf & I C §727.2\(c\), \(g\)](#); [Cal Rules of Ct 1496\(a\)](#). The court may declare the hearing at which the first foster care placement order is made to be the first status review hearing. [Welf & I C §727.2\(c\)](#); [Cal Rules of Ct 1496\(a\)](#).

The time periods for these hearings are calculated from the date the child entered foster care. [Welf & I C §727.2\(c\)](#). The court must receive a social study from the probation officer for each status hearing. [Welf & I C §727.2\(c\)-\(d\)](#); [Cal Rules of Ct 1496\(a\)\(1\), \(c\)\(1\)](#); see [§119.89](#).

At each status review hearing, the court must consider the child's safety and make findings and orders covering the following ([Welf & I C §727.2\(e\)](#); [Cal Rules of Ct 1496\(a\)\(3\), \(c\)\(2\)](#)):

- The appropriateness of the placement and the continuing need for it.
- The extent of the probation department's compliance with the case plan either to make reasonable efforts to safely return the child home or to complete steps necessary to finalize permanency.
- Any limitation on the right of the parent or guardian to make educational decisions for the child. If the court places this type of limit on the parent or guardian, it must appoint a responsible adult to make educational decisions for the child under [Welf & I C §361](#).
- Progress made by the child and parent or guardian toward correcting the causes requiring foster care placement.
- The likely date by which the child may either be returned home or else placed for adoption, have a legal guardian appointed, permanently placed with a relative, or provided with another planned permanent living arrangement.
- Services needed to assist in making the transition from foster care to independent living (needed when a child is 16 years old or older).

The court must make these determinations on a case-by-case basis and refer to the probation officer's report and any other evidence relied on when making its written findings. [Welf & I C §727.2\(e\)](#); [Cal Rules of Ct 1496\(a\)\(4\)](#).

The court must return the child home if the probation department does not meet its burden of proof by a preponderance of the evidence that returning the child home would create a substantial risk of detriment. [Welf](#)

& I C §727.2(f); Cal Rules of Ct 1496(a)(2). In making its determination, the court must consider the social study report, recommendations, and the case plan made under Welf & I C §706.5(b), as well as any other reports, including that of any child advocate. Welf & I C §727.2(f); Cal Rules of Ct 1496(a)(2). It must also consider the efforts and/or progress made by the child and family and the extent to which the child availed himself or herself of the services. Welf & I C §727.2(f); Cal Rules of Ct 1496(a)(2).

These hearings may be conducted by an administrative panel in certain circumstances. Welf & I C §§727.2(h), 727.4(d)(7)(B); Cal Rules of Ct 1496(f).

#### **b. [§119.78] Permanency Planning Hearings**

For every ward who is placed in foster care, which may include placement in a group home, or the home of a relative or nonrelated extended family member, as well as in a licensed foster care home (see Welf & I C §727(a)), the court must hold a permanency planning hearing within 12 months of the date the child entered foster care, and periodically, but no less frequently than every 12 months, thereafter. Welf & I C §727.3(a)(1); Cal Rules of Ct 1496(b). The date the child enters foster care is generally defined as 60 days after the date the child is first removed from home. Welf & I C §727.4(c)(4). If the child is detained pending placement, then the date the child enters foster care is the date the child is declared a ward. Welf & I C §727.4(c)(4)(A). If the child is committed to a ranch, camp, school, or other institution for more than 60 days pending placement, then the date of entry into foster care is the actual date of the placement. Welf & I C §727.4(c)(4)(B). If there are to be no reunification services, this hearing must be held within 30 days of the hearing at which the “no reunification services” decision was made. Welf & I C §727.2(b); Cal Rules of Ct 1496(b).

At each permanency planning hearing, the court must consider the social study report and updated case plan (see §119.89) and must order a permanent plan for the child. Welf & I C §727.3(a)(4), (b); Cal Rules of Ct 1496(b)(1), (3)(C). If the child has a continuing relationship with his or her parents or guardians, they must be involved with the formulation of this plan. Cal Rules of Ct 1496(b)(4).

If the court continues the case and orders further services, it must inform the parent or guardian that if the child cannot be returned home by the next permanency planning hearing, a termination of parental rights proceeding under Welf & I C §727.31 may be initiated. Welf & I C §727.3(b).

**(1) [§119.79] Returning Child Home**

Returning the child home is the highest priority, and the court must do so unless reunification services were not offered under [Welf & I C §727.2\(b\)](#) or the court finds, by a preponderance of the evidence, that returning the child home would create a substantial risk of detriment. [Welf & I C §727.3\(b\)\(1\)](#); [Cal Rules of Ct 1496\(b\)\(3\)\(A\)](#). The probation department has the burden of establishing this detriment. [Welf & I C §727.3\(b\)\(1\)\(B\)](#); [Cal Rules of Ct 1496\(b\)\(3\)\(A\)](#).

The next level of priority would be a permanent plan of eventually returning the child home after an additional six months of reunification services. [Welf & I C §727.3\(b\)\(2\)](#); [Cal Rules of Ct 1496\(b\)\(3\)\(B\)](#). If more than 18 months have elapsed from the time the child was removed, the court may not order this plan. [Welf & I C §727.3\(b\)](#).

With this plan, the next hearing must take place within 18 months from the date the child was originally taken from the parent's or guardian's custody, and the court must find that there is a substantial probability that the child will be returned home within the extended period of time or that reasonable services have not been provided to the parent or guardian. [Welf & I C §727.3\(b\)\(2\)](#); see [Cal Rules of Ct 1496\(b\)\(3\)\(B\)](#). The court must find that both the child and the parent or guardian have shown the ability to complete the objectives of the case plan. [Welf & I C §727.3\(b\)\(2\)](#).

**(2) [§119.80] Other Permanent Plans**

Under [Welf & I C §727.3\(b\)](#) and [Cal Rules of Ct 1496\(b\)\(3\)\(C\)–\(F\)](#), the other possible permanent plans in order of priority are:

- Identify adoption as the permanent plan and order that a termination of parental rights hearing be held within 120 days under [Welf & I C §727.31](#) (see discussion in [§119.82](#)). In that case, the court must find clear and convincing evidence that reasonable services have been provided or offered to the parents. In setting a [Welf & I C §727.31](#) hearing, the court must order that an adoption assessment report be prepared under [Welf & I C §727.31\(b\)](#).
- Order a legal guardianship under [Welf & I C §728\(c\)–\(f\)](#) and [Cal Rules of Ct 1496.2](#).
- Place the child with a fit and willing relative on a permanent basis. When the court does this, it may authorize the relative to provide the same legal consent for the child's medical care and education as the custodial parent.
- Place the minor in a planned permanent living arrangement. This may mean placement in a specific, identified foster family home, program, or facility on a permanent basis, or placement in a



transitional housing placement facility. The court must specify the goal of the placement, which may include returning home, emancipation, guardianship, or permanent placement with a relative.

**c. [§119.81] Postpermanency Planning Hearings**

Postpermanency status review hearings for wards in foster care must be held annually, six months after each permanency planning hearing (see §119.78). See [Welf & I C §727.2\(c\)](#); [Cal Rules of Ct 1496\(c\)](#). The court must receive a social study from the probation officer for each of these hearings. [Welf & I C §727.2\(c\)–\(d\)](#); [Cal Rules of Ct 1496\(c\)\(1\)](#); see §119.89.

At each status review hearing, the court must consider the child's safety and make findings and orders covering the following ([Welf & I C §727.2\(g\)](#); [Cal Rules of Ct 1496\(c\)\(2\)](#)):

- The appropriateness of the current permanent plan.
- The continuing necessity for and appropriateness of the placement.
- The extent of the probation department's compliance with the case plan.

After the first permanency planning hearing, the court may not order the child to be returned home at any status review hearing. [Welf & I C §727.2\(g\)](#).

**d. [§119.82] Termination of Parental Rights**

Whenever a ward has been in foster care for 15 of the most recent 22 months, parental rights must be terminated following the procedures in [Welf & I C §727.31](#) unless there is a compelling reason that termination would not be in the child's best interests or there have not been reasonable reunification efforts. [Welf & I C §727.32\(a\)](#); [Cal Rules of Ct 1496.3\(a\)](#). [Welfare and Institutions Code §727.31](#) applies to all children who have been placed in out-of-home care under [Welf & I C §727.2](#) or [§727.3](#) and for whom the court has ordered a hearing to consider permanently terminating parental rights. [Welf & I C §727.31\(a\)](#).

Notice procedures for terminating parental rights are governed exclusively by [Welf & I C §294](#). See [Welf & I C §§727.31\(e\), 294\(k\)](#); [Cal Rules of Ct 1496.5\(a\)](#). See discussion in [Benchguide 104: Juvenile Dependency .26 Hearing §§104.18–104.26](#) (Cal CJER).

In setting a termination hearing under [Welf & I C §727.31](#), the probation department must also concurrently make efforts to identify an approved family for adoption and prepare an assessment under [Welf & I C §727.31](#). [Welf & I C §727.32\(d\)](#); [Cal Rules of Ct 1496.3\(a\)\(1\)](#).

Procedures for terminating parental rights are those set out in [Welf & I C §366.26](#) except for those in [Welf & I C §366.26\(j\)](#) (which omits the probation department from the list of entities responsible for the child). [Welf & I C §727.31\(a\)](#); [Cal Rules of Ct 1496.5\(a\)](#). Each county probation and social services department should develop a joint protocol for freeing wards for adoption. [Cal Rules of Ct 1496.5\(b\)](#).

**(1) [§119.83] Appointment of Counsel**

At the outset of a hearing under [Welf & I C §727.31](#) to terminate parental rights, the court must appoint counsel for the child if he or she does not have an attorney and appoint separate counsel for the parents if they cannot afford an attorney. [Welf & I C §727.31\(a\)](#); see [Cal Rules of Ct 1479 for child’s counsel’s responsibilities in a delinquency case](#). The same attorney may not represent both the child and the parents. [Welf & I C §727.31\(a\)](#).

**(2) [§119.84] Assessment**

In ordering a termination of parental rights hearing, the court must direct the probation department and the licensed county adoption agency, or the State Department of Social Services (DSS) to prepare an assessment that shall include all of the following ([Welf & I C §727.31\(b\)](#)):

- Current search efforts for absent parents.
- Review of amount of and nature of contact between the child and the parents since the time of placement.
- Evaluation of the child’s medical, developmental, scholastic, mental, and emotional status.
- Preliminary assessment of the eligibility and commitment of any prospective adoptive parent or prospective guardian, including a criminal check, a check for prior child abuse or neglect, and a determination of the ability to meet the child’s needs and to understand the obligations of adoption or guardianship.
- Relationship of the child to prospective adoptive parents or prospective guardians, the motivation for seeking adoption or guardianship, and the child’s wishes concerning adoption or guardianship unless the child’s age or condition precludes a meaningful statement.
- Description of efforts made to identify prospective adoptive parents or legal guardians.
- Analysis of likelihood of adoption if parental rights are terminated.

### (3) [§119.85] Orders

When the court orders a termination of parental rights hearing to be held, it must also order the licensed county adoption agency or State DSS, when it is acting as an adoption agency, to take exclusive responsibility for determining the adoptive placement and making all adoption-related decisions. [Welf & I C §727.31\(c\)](#). Once the court terminates parental rights, it must order custody jointly to the probation department and the county adoption agency or the State DSS. [Welf & I C §727.31\(d\)](#). The order must also provide that either the adoption agency or State DSS has exclusive responsibility for determining the adoptive placement and for making all adoption-related decisions. [Welf & I C §727.31\(d\)](#). An adoption petition may not be granted until the appellate rights of the natural parents have been exhausted. [Welf & I C §727.31\(d\)](#).

### (4) [§119.86] Time Calculations

In determining what constitutes 15 out of 22 months, the following rules apply ([Welf & I C §727.32\(b\)](#); [Cal Rules of Ct 1496.3\(b\)](#)):

- Determine the date the child entered foster care, as defined in [Welf & I C §727.4\(d\)\(4\)](#) and [Cal Rules of Ct 1401\(a\)\(7\)](#). In some cases, this will be the date the child entered foster care as a dependent.
- Calculate the total number of months that the child has spent in foster care. Do not start over if a new petition is filed or for any other reason.
- If the child is in foster care for a portion of a month, calculate the total number of days in foster care during that month. Add one month to the total number of months for every 30 days the child is in foster care.
- Exclude time when:
  - The child was detained in the home of a parent or guardian;
  - The child was living at home on formal or informal probation, at home on a trial home visit, or at home with no probationary status;
  - The child was a runaway or “absent without leave” (AWOL); or
  - The child was out of the home in a non-foster care setting, including juvenile hall, the DJJ, a ranch, or any other locked facility.
- Once the total number of months in foster care has been calculated, determine how many of those months occurred within the most recent 22 months. If that number is 15 or more, the probation

department must follow the procedures in [Welf & I C §727.31](#) to terminate parental rights (see [Cal Rules of Ct 1496.3\(a\)](#)).

Once the probation department has documented a compelling reason for not terminating parental rights, there is no need to take additional action or provide additional documentation after any subsequent 22-month period. [Welf & I C §727.32\(b\)](#); [Cal Rules of Ct 1496.3\(b\)\(6\)](#).

#### **(5) [§119.87] Reasons for Not Terminating Parental Rights**

Compelling reasons for not terminating parental rights include the following ([Welf & I C §727.3\(c\)](#)):

- The child who is 12 years of age or older objects to termination of parental rights.
- The child who is an older teen specifically requests that the permanent plan be emancipation.
- The parent or guardian and the child have a significant bond, the parent or guardian is unable to care for the child because of an emotional or physical disability, and the child's caregiver has committed to raising him or her to the age of 18 and facilitating visitation with the disabled parent or guardian.
- The child agrees to continued placement in a residential treatment facility that meets the child's treatment needs, and those needs would not be met by a less restrictive placement.

#### **e. [§119.88] Service and Notice**

For all the postdisposition hearings held under [Welf & I C §§727, 727.2, and 727.3](#) (see [§§119.77–119.81](#)), the probation officer or the clerk must serve written notice on all persons required to receive notice under [Welf & I C §727.4](#) (such as a child eight years old or older and the foster parents), as well as the child's present caregiver, any Court-Appointed Special Advocate, and counsel. [Welf & I C §727.4\(a\)](#); [Cal Rules of Ct 1496\(d\)](#). This notice must be served no earlier than 30 nor later than 15 calendar days before each hearing date. [Welf & I C §727.4\(a\)](#); [Cal Rules of Ct 1496\(d\)](#).

The notice must be made on Judicial Council form: Notice of Hearing—Juvenile Delinquency Proceeding (JV-625) and must contain such information as the date, time, and location of the hearing; the child's and parents' rights; the nature of the hearing; and any change in custody or status that is being recommended. [Welf & I C §727.4\(a\)](#); [Cal Rules of Ct 1496\(d\)](#).

**f. [§119.89] Social Study Report**

Before each hearing described above, the probation officer must provide a social study report that includes an updated case plan. [Welf & I C §§727.2\(c\), 727.3\(a\)\(1\), 727.4\(b\)](#); [Cal Rules of Ct 1496\(e\)](#). The contents and scope of the report and of the case plan are set out in [Welf & I C §§706.5 and 706.6](#). The report must include recommendations for court orders and the evidentiary bases for those recommendations. [Cal Rules of Ct 1496\(e\)](#); see also [Welf & I C §§727.2\(c\), 727.3\(a\)\(1\), 727.4\(b\)](#) (requirement that probation department file a social study with the court).

The probation officer must file the report at least 10 calendar days before each hearing; he or she must also provide copies of the report to the ward, the parent or guardian, any attorneys of record, and any court-appointed special advocate. [Cal Rules of Ct 1496\(e\)](#).

**K. [§119.90] Paternity Inquiry**

Even if the court has determined paternity at the detention or jurisdiction hearing when the court orders the probation officer to assume custody of the child for foster care placement under [Welf & I C §727\(a\)](#), it must inquire about the identities and addresses of all presumed or alleged fathers at the disposition hearing. [Welf & I C §726.4\(a\)](#). The court must make this inquiry even in the presence at the hearing of a man claiming to be the father. [Welf & I C §726.4\(a\)](#). The inquiry may include whether ([Welf & I C §726.4\(a\)](#)):

- (1) A paternity judgment already exists.
- (2) The mother was married or believed she was at the time of conception or afterwards.
- (3) The mother was cohabiting with a man at the time of the conception or birth.
- (4) The mother has received support or promises of support for the child or in connection with the pregnancy.
- (5) Any man has acknowledged his possible paternity.
- (6) Paternity tests have been administered and any results.

Any alleged fathers identified in the course of the inquiry must be notified of the proceedings. [Welf & I C §726.4\(b\)](#). From the time a petition has been filed until wardship is terminated (or the petition is dismissed or parental rights have been terminated under [Welf & I C §727.31](#)), the juvenile court has jurisdiction to hear an action determining the existence of a father-child relationship under [Fam C §7630](#) or [§7631](#). [Welf & I C §726.4\(e\)](#). Once a man appears at the disposition hearing and files an action under [Fam C §7630](#) or [§7631](#), the court must determine whether he is the father. [Welf & I C §726.4\(d\)](#).

## L. Appeals and Reviews

### 1. [§119.91] In General

Appeals are governed by [Welf & I C §800](#). An appeal from a disposition may encompass errors that occurred at the jurisdiction hearing. *In re Gregory M.* (1977) 68 CA3d 1085, 1090, 137 CR 756. The time limit for filing a notice of appeal is jurisdictional; an untimely appeal cannot be heard, even if the time begins with the order denying the petition for rehearing. *In re Gary R.* (1976) 56 CA3d 850, 852–853, 129 CR 26.

[California Rules of Ct 37–38.6](#) govern appeals in delinquency cases.

### 2. [§119.92] Who May Appeal

The child may appeal a delinquency judgment. [Welf & I C §800\(a\)](#). A parent, however, has no standing to appeal an order declaring a child to be a ward of the court (*In re Almalik S.* (1998) 68 CA4th 851, 854, 80 CR2d 619), nor does a child who was found to have violated a city ordinance and therefore was not the subject of a delinquency judgment under [Welf & I C §601 or §602](#) (*In re K.S.* (2003) 112 CA4th 118, 121, 5 CR3d 39).

The prosecution may take appeals from certain orders, such as an order reducing the degree of an offense or modifying it to a lesser offense, an order dismissing an action before jeopardy attached, or the imposition of an unlawful order at a disposition hearing. [Welf & I C §800\(b\)](#). For example, [Welf & I C §800\(b\)\(4\)](#) permits the prosecution to appeal the child’s sustained demurrer before he or she had been placed in jeopardy. See *In re Rottanak K.* (1995) 37 CA4th 260, 264, 43 CR2d 543. Similarly, when a case was dismissed because the prosecution was unable to go forward without suppressed evidence, the prosecution may appeal that dismissal under [Welf & I C §800\(b\)\(4\)](#) even if no appeal is possible under [Welf & I C §800\(b\)\(1\)](#). *In re Ricardo C.* (1995) 37 CA4th 431, 435–437, 43 CR2d 585.

The prosecution may not appeal a grant of probation, however, although it may seek review of such an order by writ. [Welf & I C §800\(c\)](#). This section only restricts the *prosecution*, and not the child, from appealing a probation order. *In re Do Kyung K.* (2001) 88 CA4th 583, 590, 106 CR2d 31.

## M. [§119.93] Retaining Jurisdiction Past Age of Majority

Although the maximum term of confinement is limited, the court may retain jurisdiction over the juvenile and make appropriate orders under [Welf & I C §727](#) (services for the child) until the child is 21 years old (see [Welf & I C §607\(a\)](#)) unless the child has committed offenses listed in [Welf & I C §707\(b\), \(d\)\(2\), or \(e\)](#) and has been committed to the DJJ

(formerly the California Youth Authority) or confined in a mental health facility (see [Welf & I C §607\(b\)–\(d\)](#)), in which case, the court may retain jurisdiction until the person is 25 years old. [Welf & I C §726\(c\)](#).

**N. [§119.94] Access to Records**

Only certain people may have access to court files in the absence of a court order; these include court personnel, prosecutors, the child and the parent or guardian, attorneys, school superintendent (of the school the child attends), and members of multidisciplinary teams providing treatment or supervision of the child. [Welf & I C §827\(a\)](#). Although disclosure is generally restricted, the court is obligated to provide information in writing on the offense and the disposition to the school personnel in the school district in which the child attends school when the child has been found to have committed any felony and certain misdemeanors, such as those involving drugs, alcohol, or graffiti. [Welf & I C §827\(b\)\(2\)](#). Counselors and teachers who receive this information must keep it confidential while determining how best to rehabilitate the child and protect others. [Welf & I C §827\(b\)\(2\)](#). Unlawful dissemination of this information is a misdemeanor. [Welf & I C §827\(d\)](#).

In addition, a former ward may petition the court to order his or her records sealed. [Welf & I C §781\(a\)](#); [Cal Rules of Ct 1497](#).



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